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EIGHTH
MID-WINTER TRUST CONFERENCE

Trust Company Division
AMERICAN BANKERS ASSOCIATION
New York

February 16-17-18, 1927

Index

Administrative Procedure

PAGE

Recent Developments in Acting as Registrar and Transfer Agent — David P. Condon — 9

Escrows and How We Handle Them — E. L. Farmer — 91

Settling Estates as Executor or Administrator
A Symposium Led by — William J. Stevenson — 69

1. Period Between Death and Probate — Roland E. Clark — 71
2. Probate — C. Alison Scully — 75
3. Obtaining Possession of Assets — R. H. Trott — 76
4. Real Estate — F. A. Carroll — 77
5. Analysis of Investments — A. F. Young — 78; L. A. Bowman — 81
6. Taxes — A. N. VanVleck — 82
7. Legacies — John W. Chalfant — 83
8. Final Accounting — Joel H. Prescott — 83

Business Extension

Extending Trust Business by Printed and Spoken Word — Leopold A. Chambliss — 33

A Symposium on Advertising, and Salesmanship Cooperation by Officers and Directors — Fred W. Ellsworth — 95

Selling Trust Services Through Personal Salesmanship — H. B. Grimm — 101

Preparing the Trust Prospect to Say "I Will" — Charles H. Moore — 27

Trust Companies Through the Testator's Eyes — Gilbert T. Stephenson — 51

Charges

Why Charge for Safekeeping of Securities? — John C. Mechem — 13

History and Economic Research

History of the Trust Idea — Elmer Mantz, Ph.D. — 5

Academic Freedom or Academic Truth? — Francis H. Sisson — 21

PAGE

The Market for Corporate Fiduciary Services — James G. Smith — 56

Résumé of the Fourth Regional and Second Mid-Continent Trust Conferences — Genieve N. Gildersleeve — 3

Insurance Trusts

Business Insurance—Open Forum with Trust Officials and Life Insurance Underwriters Participating — Leslie G. McDouall — 15; Clancy Connell — 17; Thomas C. Hennings — 19; Charles R. Holden — 19

Important Factors to Be Considered in Developing Insurance Trusts — W. H. Brown — 98

Preventing Lapse of Policies — Franklin W. Ganse — 107

Experiences in Selling Insurance Trusts — Oliver J. Neibel — 104

Corporate Fiduciaries the Natural Allies of Life Insurance Companies — Winslow Russell — 30

The Taxation of Life Insurance Trusts — Leon Gilbert Simon — 66

Investments

The Psychological Factor in Trust Investments — C. W. Fenninger — 39

Review and Survey of Trust Securities — H. F. Wilson — 89

Laws

The Merger Law as Applied to Trusts (With Some Reference to Practical Difficulties) — Wm. Rhodes Hervey — 45

The Value of Reciprocal Laws — Charles M. Rogerson — 84

Reception Committee — 121

Sixteenth Annual Banquet

Remaining Safe for Democracy — Edward J. Fox — 109

Enduring Landmarks — C. F. Kelley — 111

Four Walls and a Roof — Edgar A. Guest — 116

Cover Illustration: Aeroplane View of Lower New York City

Proceedings

First Session

Wednesday Morning, February 16, 1927

THE Eighth Mid-Winter Trust Conference of the Trust Company Division of the American Bankers Association convened at the Waldorf Astoria Hotel, New York City, at ten-thirty o'clock; Mr. W. S. McLucas, Vice-President of the Trust Company Division of the American Bankers Association and Chairman of the Board, Commerce Trust Company, Kansas City, Missouri, presiding.

CHAIRMAN MCLUCAS: We will open the Eighth Mid-Winter Trust Conference held under the auspices of the Trust Company Division of the American Bankers Association. These conferences are not held for the purpose of creating or seeking publicity for individuals or institutions, but to build a sound and solid foundation upon which we can erect a structure of helpfulness to those in attendance, in the daily practice of their profession.

We are here to help each man in attendance to improve the service which he is giving to the people of his community. By the use of the word "service," I mean "to serve better."

Instead of delivering a number of well written papers prepared from research work, we are here to recite the lessons learned during the past year and throughout the past years. We are here for a free interchange of thought and opinion based on actual knowledge and experience.

The program has been built after correspondence, traveling, reading, studying and conversation with trust executives in all parts of the United States. The varied topics are distributed throughout the three days, in order that each day will supply some help in all phases of trust work.

We have invited to assemble with us today, attorneys affiliated with corporate fiduciaries, officers of insurance companies and insurance underwriters, as well as men and women representing religious and educational bodies. The day has passed when the subjects we consider, are of interest only to our own group. We are learning very rapidly that many branches of human endeavor are talking the same language that we have been talking, and it is for that reason that these groups have been invited in order that we may talk over our problems together. Everyone in attendance at this conference is free to enter into the discussions and express his own opinions as well as give freely from his knowledge and experience in the matters about which we shall talk.

The Regional Conferences that have been held throughout the year, will be the next subject. Miss Gildersleeve, who is in charge of the editing and preparation for publication of the proceedings of the various conferences, and is thereby qualified to give us a résumé of the recent conferences, will now speak to us. Miss Gildersleeve.

The Fourth Regional and Second Mid-Continent Trust Conferences

By GENIEVE N. GILDERSLEEVE

Assistant to the Secretary, Trust Company Division, American Bankers Association

MR. CHAIRMAN, Ladies and Gentlemen: Since the last Mid-Winter Conference held in New York a year ago, there have been two similar conferences in the United States: one last September in Los Angeles, called the Fourth Regional Trust Conference of the Pacific Coast and Rocky Mountain States, held under the auspices of the Trust Company Division of the American Bankers Association; the other in Omaha, last December, called the Second Mid-Continent Fiduciary Conference of the American Bankers Association.

The proceedings of these Conferences have been published in pamphlet form, as you see here: the Los Angeles proceedings in the blue cover, and the Omaha proceedings in the yellow. These proceedings have been distributed to all those in attendance at those Conferences, but with our limited appropriation, it is, of course, impossible to send them to all the corporate fiduciaries interested, about five thousand in all, including the trust companies and national and state banks with trust departments. However, anyone in this audience may obtain a copy at the close of the meeting.

Mr. Mershon has asked me to do two things: first, give you a résumé of these proceedings, and, second, to do it in ten minutes. Any of you present, who may have had an opportunity to look over these proceedings, will recognize the fact that these two requests are mutually contradictory. However, we, in the Trust Company Division, are accustomed to attempting the impossible, and sometimes with surprising success, so I will now proceed.

The Pacific Coast Conference

THE Los Angeles proceedings—on which you see depicted one of the many lovely scenes with which California abounds—the "Half Dome" in the Yosemite Valley—covers, on the subject of wills and trusts: how to plan a model will, from the standpoint of testator, executor and trustee; the personal solicitation of wills; the most important requirements for accepting living trusts; when trusts should be declined; how far a trust officer should go in suggesting methods of disposing of property under wills and trusts; potential liabilities faced by trustees in closing trusts.

On the subject of investments, there are taken up questions connected with holding non-legal investments in court trusts; whether they should be retained at all; if retained, how long; legal right to retain; and the real solution. One of the most interesting things in these proceedings is a very lively debate on the subject of whether real estate first mortgages are preferable to bonds as investments for trust funds. This debate brought out many interesting points, but Judge Hervey, who refereed the debate, said that as the contestants had fought in different rings, it was impossible to render a decision. (Laughter).

Other subjects treated were: trust department earnings; trust department organization; escrows, in which the people out on the Pacific Coast are more interested than we are here, though it is a coming subject here, as you will discover during the next two or three days; the lawyer and the trust company; and a code of ethics for trust companies.

There is not a man or woman here, in my opinion, who would not be interested in at least one of these subjects, and who would not, perhaps, in these proceedings, find the answer to a good many troublesome problems that may be puzzling him or her in the handling of his or her own trusts, right at this moment.

The Mid-Continent Conference

TURNING to the Omaha proceedings, the entire first session is devoted to the important subject of "taxation, estate, inheritance and income," and the program also said "general." As Mr. Berry, who led the discussion, said, "Like all good trust officers, for fear they overlooked something, they tacked on the word 'general'." Mr. Berry is one of the members of our Special Committee on Taxation which, during the last two years, has been devoting a great deal of time and attention to trying to minimize or do away with the evils of multiple taxation which are troubling the people of the United States at the present moment.

On this subject of taxation, such puzzling questions as, "how to handle tax matters in connection with liquidating dividends," "revokable trusts," "when the wife has paid the premiums," "property in joint names," "property passing in entirety" and "joint tenancy" (there is a fine distinction between the two), are asked and answered.

Then comes a joint session with our friends, the life insurance underwriters. The life insurance trust and its various provisions are analyzed by a prominent life underwriter of Philadelphia. Then a trust officer from Flint, Michigan, discusses, "how trust companies and banks can cooperate with life insurance underwriters, to the mutual advantage of both and to the great public which they serve." Then twelve examples of living trust agreements are given by a trust officer from St. Louis, and if any of you are being puzzled by certain contingencies and wondering how you can take care of them in trust form, you will probably find the answer here.

Then "corporate and business trusteeships"—given by a lawyer and, as he says, an outsider—"from the standpoint of lawyer and client;" then by a trust officer from the standpoint of the trust companies, showing the opportunities in syndicate management, receiverships, financing small businesses, etc. Then "investment trusts," and, always an interesting subject to trust officials; "our most effective trust department publicity," given by four trust officers, respectively, from Shreveport, Louisiana; Tulsa, Oklahoma; Wichita, Kansas, and Chicago, Illinois. While local conditions are different, there is a general underlying theme which is of interest to all.

Then "coordinating forces—from the inside," or staff relations; "danger signals to be observed in trust investments," "safeguarding the handling of securities," and to wind up with the human touch—which is always present in fiduciary work, if it is to be successful—"relations with beneficiaries."

My ten minutes are up. May I close by saying, "Coming events cast their shadows before." These proceedings, packed full as they are of helpful information and concrete practical suggestions and as you—from this brief and inadequate résumé—may have glimpsed

Ann 34 p
1927

them to be, these proceedings are but shadows of the proceedings which will develop from these sessions before you during the next three days, and which will record in permanent form the ideas, experiences, opinions, views and wisdom of some of the best minds in the corporate fiduciary field and in the related fields of insurance, law and academic research, here assembled in attendance at the Eighth Mid-Winter Trust Conference of the corporate fiduciaries of the United States.

CHAIRMAN MCLUCAS: Our next speaker, Dr. Mantz, has devoted a great deal of time to subjects related to the trust idea and is, therefore, qualified to talk on the subject of, "The History of Trusteeship."

The History of Trusteeship

By ELMER MANTZ, Ph.D.

Columbia University, New York City

MR. CHAIRMAN, Ladies and Gentlemen: I am not going to give you a history of trusteeship this morning, but I should like to bring out a few ideas that are suggested by a study of the history of trusteeships, ideas which are calculated, in my mind, to give trusteeship a certain genealogy or family tree, as you may say, in the general family of human events or the history of civilization.

In mentioning the facts of trusteeship in former times, long before the nineteenth century, I shall have occasion to use such words as "administrator" and "executor" and "trustee," in ways that our contemporaneous age does not allow of, because now we have a strict sense of meaning for these words. The institution has changed and, therefore, the modification must come in, and I would like to have you understand that when I use these words, it is not necessarily in the strict modern sense of them.

If we try to disengage the root idea of the word "civilization" from all confusing and contradictory elements, we come to see that it is a combination of forces that tend to broaden our philosophy and to give to it fuller play in practical life by protecting us against hazards.

Conceiving of civilization in this way it is evident that the history of trusteeship forms—or will form, when it is written—a safe index of progress in various times and among various races.

Trusteeship, in any useful form, depends upon a highly developed sense of social responsibility, emancipation from superstition, and a sympathetic understanding of the aspirations of individuals and of their rights. Breadth of view is necessary to the very conception of it; and its exercise protects both the individual and society —not against fate—but against avoidable hazard.

If we could live, in full possession of all our faculties, for twice or three times the ordinary span of life, we should gain a momentum of knowledge and of efficient purpose that can never fall to the lot of any of two or three or four generations of individuals each of whom must begin life in ignorance and danger and end it before the time of ideal accomplishment—the time when wisdom, experience and financial protection might combine to bring about great things.

But humanity knows this; and trusteeship is the great medium by the aid of which it has tried to make its ideal become, so far as is now possible, a reality.

The Foundation of Authority

EFFICIENT trusteeship—and especially corporate trusteeship—is generally thought of as having been relatively undeveloped before modern times. It is of course a very modern institution in the form in which we know it in America. But humanity achieved at least a degree of civilization ages ago; and from the very beginning of this civilized period we can trace a continuous effort to obtain complete powers of testatorship and complete protection in the execution of wills.

Many an institution with a history that is now centuries old owes its existence to the responsible action of trustees as much as to the intention of an idealistic testator.

The concept of the trust is as old as civilization. It reaches still further back, into the time when society first accepted the authority of the priest and of the king. Men will not accept domination unless there seems to be a sufficient reason for it. In the case of the king, this may have been the sufficient reason of showing respect to his superior intelligence or physical strength. But probably not: there is evidence that primitive men accept authority in a spirit of religion and that they recognize the king because they take him to be the deputy of the divinity, even interpreting his superior strength as evidence that he has been especially chosen by the divinity to rule over the tribe. What the first kings, themselves, thought of the source of their authority is beside the point; we know that as time went on they were convinced by the popular opinion of their subjects and that they considered themselves entrusted by the divinity with the fate of the people.

Early Trusteeships

THE priesthood was at first identified with the kingship, and only very slowly did the spiritual and temporal rulers of men grow apart and assume special functions. Moses, as the trustee from Jehovah of the well-being of the people of Israel, represents a time when priest and king were one, and responsible in both functions to the divinity.

Another example of the early idea of trusteeship outside the typically modern one of manager of the worldly goods of others is found in ancient Egypt. It is known that in that country the priesthood not only attended to the usual religious cult but that the priests were trained and organized to carry on, in addition, what we should now call scientific research. They attained great proficiency in certain branches of knowledge, particularly in mathematics, astronomy and allied subjects. But—whatever their private individual opinions about it may have been—there is no doubt at all that, officially and as a group, they looked upon science as God-given. Science and revelation were not considered two, but one. Therefore the Egyptian priests thought themselves the custodians of science under the divinity and as delegated to administer it for the best interests of the rulers and people of Egypt. They furnished useful information to the public; but they kept careful guard over the methods by which they gained this information. Only at a late period did they surrender their trust to all who were willing to prepare themselves for scientific investigation.

Moses was just referred to as the trustee supposedly appointed by Jehovah to watch over the children of Israel. His is a somewhat exceptional case; but it is exceptional in the extent of its significance in Bible history rather than in its nature. Moses was the greatest of the patriarchs; but there were many others, and in the patriarchal organization of Hebrew society the head of each tribe was answerable directly to Jehovah for its right conduct and for its prosperity.

The most familiar of all examples of the religious type of the root idea of trusteeship is that of Christ sent to guide humanity back within the pale of the divine law so that it might inherit the grace of salvation by accepting His authority.

Various other beliefs, such as that in the guardian angel or the patron saint, or, again, in the duties of the god-father or god-mother, are all connected with the fundamental idea of trusteeship, and, with the others that have been mentioned, they make up the story of the principle before it was applied to the particular purposes which are familiar to us of today.

Technical Origins of Trusteeship

THE technically recognized forms of the trust have differed widely in various times and countries, and so the point of departure for any real history of trusteeship will have to be the broadest and most inclusive interpretation of it. The rigid framework of such a story must be the trust in its technically recognized forms; but the appeal of any history—its real human interest—must depend upon the various contacts that it makes with the more general history of men. No institution has a broader human appeal than the trust; for there is none that touches men more intimately or in more various ways.

Some very obscure and complicated problems are presented by the records of trusteeship. Some of them can perhaps never be quite satisfactorily explained; yet they are far too interesting and important to be passed over in silence.

Respect for the Dead

IT is our custom and our legal duty to respect the will of the dead. Where is the source of this philosophy and of this legislation? In a sense it is anti-Christian, for the absorbing concern of the Christian is the afterlife, and not the materialistic one that we live in the world. Yet it is not anti-religious in its essence, for a will generally implies a benevolent intention towards the living; and in some civilizations—such as the Chinese—the worship of ancestors and respect for their will is a prime article of faith.

Up until very recent times it has been taken for granted that religious respect for the dead prompted the whole institution of trusteeship as a way to safeguard the execution of the will of the dead by every possible precaution. But there is a widespread horror of death among many races, and there is a consequent belief that the dead are malevolent rather than well disposed toward the living. This is said to be true even of the Chinese, among whom the words for "ghost" and "devil" are the same. Therefore a new suggestion can be made regarding the origin of trusteeship. It consists in the idea that respect for wills was not prompted by reverence for the dead but rather by a kindly and sympathetic remembrance of the man who was once alive but who is now unable to defend his opinions by acts. Perhaps it is this spirit, rather than one of superstitious reverence, that inspired the saying "Do not speak ill of the dead."

An Economic Theory

BUT there is a further possibility—one that has never been proposed so far as I know, but that may have had something to do with the origin and development of the trust. We could probably show that there has long existed an economic theory that wealth increases in direct ratio to the stability of its applications, since the best profits are realized when an institution has outlived the stage of experiment. This may account in large part for the development of trusteeship; but it may have had little enough to do with the origins of it.

Theorists like to make a single striking idea serve as a complete explanation of such historical facts as trustee-

ship. But these are many-sided and have undergone all sorts of influences. The complete story of the trust should therefore take more than a single theory into consideration. We are careful to consider all factors in dealing with electricity or with explosives; history is respectable enough—and even dangerous enough—to merit the same cautious treatment.

But scientific caution that is worthy the name will not exclude from the story of trusteeship everything that does not seem to form a part of its restricted, technical history. We ought to consider the foregoing facts, as well as others such as agencies of various other sorts, as essential in the intensely human story that is involved.

Analysis of the Growth of Technical Forms

THE history of the trust would necessarily consist, for the most part, in the analysis of the growth of a particularly definite and technical institution. It happens that the evolution of means of assuring the execution of wills—whether by positive legislation, or, as has sometimes been the case, without it—forms in itself a story of the greatest interest.

In most countries, trusteeship began without strictly legal safeguards, although often religious custom took the place of the legislation that was lacking. Sometimes it was considered a humane duty, or one of simple friendship, or else it was left to the religious convictions of the trustee. But it was at first unrecognized by the civil law, so that, whether in Babylon, in Rome, or in England later on, the only protection for the testator and those favored by his will had to grow from the private opinion of the trustee. Where there was no trustee, properly speaking, but an executor, the same might be true. There had been executors from the most ancient times; but in Rome it was only at about the beginning of our era that the proper carrying out of wills was assured by law. In England this took place, as applied to trustees, by action of the high authority in equity, the judges in Chancery, at the beginning of the fifteenth century. English common law courts had always left the carrying out of wills to the honor of the trustee, finding no strictly legal reason for enforcing the execution of the testator's desires.

Too Much Legislation as Well as Too Little

BUT the trust has had to struggle against the influence of too much legislation as well as against the lack of it. In Babylonia, for example, the law of inheritance was so firmly laid down, and it was so inclusive in its scope, that only in exceptional cases was a will recognizable or useful before the courts. Under these circumstances the proper judiciary officers were generally the only capable executors—administrators, as we should say—holding their trust under the law itself rather than by the delegated authority of the testator. On the continent of Europe the Northern nations had a complete judiciary system for administering the inheritances of minors or of women. This system was evolved at an early period and continued in force for over a thousand years; it was not definitely discarded until the beginning of modern times. In mediæval England, under the early common law, the right of testatorship covered only one-third of a man's property, if he left both wife and one or more children; one-third was always reserved to the wife and one-third to the children.

Corporate Trusteeship as a Means of Substitutions

ANOTHER most interesting restriction of testamentary power was that against willing into the "dead hand," or "mortmain," of a corporation. This is generally referred to as an English restriction that was brought about by legislation toward the end of the thirteenth century. But we find it also in Rome; and it was for a while a part of the custom and law of the Christian Church to discountenance legacies to a corporation, even when it was one of its own institutions.

In the Christian Church the law survived only a few centuries. In England it long continued in force, and trusteeship was resorted to as a way of defeating its purpose. It was the custom there between the end of the thirteenth century and the beginning of the sixteenth to give property in trust—or in "enfoeffment" as it was called—to an individual or to a corporation not the rightful heir, the trustee or "foeffee" to enjoy the income from the estate. Around the year 1500, according to the estimates of reliable historians, more than half the land of England was held in trust. The crown was thus deprived of a considerable income in the form of various sorts of taxes or forfeitures. For example, the conviction for treason of the creator of a "use," or trust, did not carry with it the forfeiture of the property. In that case the trustee continued in full authority, although, if he were himself convicted of treason, the property held in "use" would be seized by the crown. It is said that in the troublous thirty years from 1455 to 1485 many partisans of the houses of York or Lancaster disposed of their property in trust as a precaution in the event of the defeat of their own side, and that thereafter the custom was more and more widely adopted. In 1536 the famous *Statute of Uses* put an end to the subterfuge.

Corporate Trusteeship as a Means of True Fulfillment

BUT corporate trusteeship had been used as the surest means of protecting those who were intended to receive property under the will. In Rome trusteeship had commonly been used, during the earlier period, as it was in England at the beginning of the sixteenth century —that is, as a means of substituting some one preferred

by the testator for the legal heir. But trusteeship was finally so legalized in Rome that such evasions became difficult, if not impossible in the majority of cases.

We find examples there of corporations definitely entrusted with the execution of wills. Thus, about 144 B. C., Favonius, a Roman officer who died while with an army invading Portugal, willed that his sons should come into their inheritance only on condition that they bring back his body for burial in a specified place in Rome—"unless", he says, "they should be entirely hindered by circumstances from doing this." And Favonius entrusts the pontiff and priests of the Flamen Temple in Rome—a corporation—with the carrying out of this will.

In the earlier period Roman corporations were excluded by law from all inheritance. But from the time of Marcus Aurelius on they enjoyed this right, and wills were then made in favor of various fraternities or other corporations, such as professional or trades unions. In all such cases the testator prescribed how the property should be used—although of course it was understood that this use would fall under the general head of the type of activity to which the corporation was devoted. And in this sense, if we do not find technical corporate trusteeship in precisely the same form as that in which it is familiar to us today, we at least find that its purposes were partly served, and by an institution with perpetual life.

In later times the function of trustees passed to certain corporations that were parts of the Christian Church. There are various reasons for this, and some of the influences that went to make up the practice of the Middle Ages came from outside Christianity itself, from the barbaric religious traditions of the days before the Roman conquest of northern Europe. Just now it is enough to say that in times of unrest people were accustomed to deposit personal property in the churches, which were inviolable in theory and which often were so in reality. The custom gradually gave rise to a certain kind of trusteeship, and during the Middle Ages it is usual to find the name of the representative of a church or monastery mentioned as an executor of wills. The wills themselves were frequently left for safekeeping in the churches. From this custom seems to have come the recognized usage, finally legalized, of submitting wills for probate for the offices of bishops. In England this was the case, so far as wills of personal property were concerned, from the latter part of the twelfth century until 1858.

The most powerful financial organization—outside various governments—that the world had seen before modern times was the Order of the Knights Templars, an order that was partly knightly and partly monastic, and that was founded in the time of the Crusades. It became enormously wealthy and, to increase its means still further, engaged in the typical banking operations with which we are familiar today. The treasurers of the various branch houses of the Knights Templars were frequently named as executors of wills. But still more frequently we find that money was deposited in the treasury of the Templars, and in many of these cases we have, in reality, an equivalent of modern corporate trusteeship. Sometimes this was merely a deposit, to be paid eventually to a creditor or heir, or to be restored to the owner. Often, however, the funds destined for certain purposes, such as annuities or payment of an inheritance, were to be handled—that is, invested—at the discretion of the Order of the Templars, and the proceeds devoted to purposes indicated by the depositor or testator. The order existed only from 1118 to 1312, but many documents have survived from that period of two centuries that seem to establish a very clear case for the prevalence, then, of corporate trusteeship.

But the evidence does not begin nor end with the dates of the Order of the Templars. Many other ecclesiastical corporations performed the duties of trusteeship, although no single one did so on as great a scale as the Templars. In France, a monastery is named trustee in 1257, and the same custom was usual in Germany, where we also find municipal corporations designated to invest trust-funds for specific purposes, as at Dorsten in 1441.

The trades-unions and merchants' associations known as "gilds" or "companies" also acted in the capacity of trustees. In 1512 a certain William Copynger left to the Fishmonger's Gild of London a piece of property to administer for charitable purposes. But these are only haphazard and isolated examples of a general and legalized custom.

It has been said that the first example of corporate trusteeship is to be found in the board of trustees incorporated in 1806, on the suggestion of Alexander Hamilton and others, to administer the funds left to the Sailors' Snug Harbor of New York. Any who are familiar with the will of Benjamin Franklin, dated 1788, and with the codicil of 1790, will be inclined to think that the idea is somewhat older, even in America.

There are very ancient examples of corporate trusteeship—examples, all of them, that tend to show that the modern and typically American institution of the trust company is carrying to broader and more successful applications a tradition that is age-old among our race. It is a tradition that has long been lost sight of in the European countries where the idea was first conceived and used. It is now being suggested anew to Europeans by the results of the successful initiative of American bankers. The complete story of it, before our own time, has never been written.

CHAIRMAN MCLUCAS: It is contemplated there will be discussion after each of these papers. Perhaps this paper you may not have an opportunity to discuss, but you may wish to ask some questions of Dr. Mantz. If anyone has any questions, I am sure he would be glad to answer.

LEROY A. MERSHON (Secretary Trust Company Divi-

sion, American Bankers Association): Mr. Chairman, a number of men have expressed an interest and, a little later, we may ask Dr. Mantz to delve deeper into some of these tombs of King Tut and others, and find what there is of interest to this group.

CHAIRMAN MCLUCAS: Our next paper is entitled, "Recent Developments in Acting as Registrar and Transfer Agent," to be presented by David P. Condon, Registrar of the Farmers' Loan and Trust Company of New York City. Mr. Condon.

Recent Developments in Acting as Registrar and Transfer Agent

By DAVID P. CONDON

Registrar, The Farmers' Loan and Trust Company, New York City

MR. CHAIRMAN, Ladies and Gentlemen: I am not quite so sure that there have been enough recent developments in the work of transferring and registering stock to call for my intruding on your time for a very long period, therefore, I beg your indulgence if I repeat an expression of my views on the subject of the duty of a registrar, because that question is brought up very frequently, and I am extremely doubtful if there is a great unanimity of opinion on the subject.

As to the duty of the registrar—it is to prevent an over-issuance of stock, and it must act independently of the corporation which has appointed it. It stands between the corporation and the stock buyer. It is not in any sense a representative or agent of the corporation. It is the duty of a registrar to see that there is not an over-issue of stock. It must, therefore, know, when it places its name upon a certificate of stock that the certificate will not produce an over-issue of stock of the corporation. The registrar therefore must refuse to register any certificate of stock which it believes is improperly issued. When the total issue of stock is once outstanding, it must know that every time it registers a certificate, that certificates for an equal number of shares have been cancelled.

Origin and Functions

THE advisability and necessity of the office of registrar was brought about primarily through possibilities for fraudulent issuing of stock on the part of transfer agents, and was emphasized by the facts shown in the case of the N. Y. and N. H. R. R. Co., against Schuyler 34, N. Y. 30; the facts being that a former President of the New York, New Haven and Hartford Railroad—then known as the New York and New Haven Railroad Company—being its transfer agent, fraudulently issued stock of that company, which went into general circulation and which, through its issuance, created an over-issue of the stock of the corporation, for which subsequently, the corporation was held liable.

The requirements for listing of stock on the New York Stock Exchange provide that while a company may transfer its own stock, under no circumstances can the company or any officer of the company act as the registrar of same. And as a further safeguard, there is a provision that the registrar shall be satisfactory to the authorities of the New York Stock Exchange. The point being that the registrar should be a disinterested, responsible party.

In regard to the function of a registrar of stock, the New York Court of Appeals, in the case of Jarvis against the Manhattan Beach Company, 148 New York, 652 says "referring to a certain certificate of stock, the paper came to them (the brokers) accredited by the genuine signatures of the proper officers of the defendant, and countersigned by the registrar, whose duty it was to guard against unauthorized or fraudulent issues of the stock. These signatures carried with them, to strangers, at least, the very highest assurance of the genuine character of the security."

Protection in Case of Inadvertence or Neglect

IN acting as transfer agent and registrar, we are frequently called upon to issue duplicate certificates of stock, in lieu of lost certificates when a surety company bond of indemnity is usually required, and I want to bring to your attention a recent development as to the bond of indemnity. The ordinary bond of indemnity does not contain any clause that protects the corporation, the transfer agent or registrar in case of their own neglect, and some of our friends—owing to recent experiences—have deemed it wise to insist upon including in bonds of indemnity of this character, a clause that will cover this contingency.

Two cases in point seem to make it advisable, one having to do with stock and the other having to do with the delivery of permanent bonds in exchange for temporary bonds.

As to the stock transaction in question, a stockholder reported a certificate lost and, in due course, obtained a surety company bond of indemnity in the usual form

against which the company issued a duplicate certificate, and the duplicate was registered by the registrar. Subsequently, the lost certificate—which had been endorsed by the owner and the endorsement or assignment guaranteed by a reputable stock exchange house before its loss—was presented to the transfer agent and inadvertently passed through their books. When they attempted, as they naturally would in the first instance, to obtain redress through the guarantee, the guarantee, to my mind, very rightfully said, "No, we are not liable in this case. At the time we guaranteed the assignment to that stock certificate, it was a perfectly good and valid obligation of that company, and bore an assignment by its owner, and as far as we are concerned, at that time, the transaction was a perfectly right and proper one, and we are not responsible for your neglect—"

I hold no brief for the transfer agent who delays posting for anywhere from twenty-four to seventy-two or maybe ninety-six hours, nor for the registrar who does not date out registrations. If the posting of the transfer agent in this instance had been prompt, as it should have been, the stop would have been caught; and, similarly, if the registrar dated out cancelled certificates, they would have caught it. The surety company refused to pay on the bond of indemnity, because there had been neglect on the part of the transfer agent and registrar.

The other case I have in mind: Temporary bonds were outstanding, some of which were reported lost, and at the time of the report of their loss, the permanent bonds were then ready for delivery. Against a bond of indemnity, permanent bonds were delivered. Subsequently, the temporary bonds previously reported lost were presented and inadvertently, permanent bonds were delivered in exchange. We have the same situation there, the surety company disclaimed all responsibility because of the neglect.

I, therefore, suggest for your consideration the advisability of giving this matter a little thought, and of having included in your bonds of indemnity a clause or paragraph that will protect you in case of inadvertence, or neglect on your part.

Facsimile Signatures

CORPORATIONS having large issues of stock should be interested in the fact that there is an amendment now pending to the corporation laws of the state of New Jersey, and I have every good reason to believe that a similar amendment will be presented to the legislature of the state of New York, that amends the corporation laws to permit the issuing of stock certificates with a facsimile signature, providing the stock certificate is countersigned by a transfer agent and registrar.

As possibly some of you know, certificates of corporations with large issues of stock have on them signatures of Vice-Presidents and Assistant Secretaries, and very frequently—with all due respect to these gentlemen—they are nothing more or less than dummies; they are appointed for the sole purpose of signing stock certificates, and that is the beginning and end of their powers. The use of the facsimile signature would do away with this, to my mind, very laborious and expensive work, and has a great deal of merit.

To those of you gentlemen from other states, might I make the suggestion that you give this matter a little thought for the benefit of those particular companies for whom you may be acting?

Dividend Orders

ON the subject of filing of dividend orders with a corporation or its paying agent, wherein direction is given for the payment of the dividends to other than the registered holder: This develops itself into a number of different groups. First, we are requested to draw a check to the order of John Jones, and forward it to such and such a bank. That type of dividend order may be susceptible to different interpretations. The check would naturally be drawn that way, because we would feel that the bank was merely the address of the holder. The bank, upon receiving the check, would have either one of two courses to pursue, depending upon the instructions they might have from their customer: One is to credit the account of the customer, and the other is to forward the check to the last known address.

We have the other form of dividend order, in which we are requested to pay the check to the order of a bank or trust company to be credited to the account of the stockholder, which is quite simple, and that form of dividend order I commend to all those in the banking business. It keeps you informed of your customer's affairs and there are many features in it that would naturally commend it.

Now, I come to another form of dividend order, and I have recently had an experience with one of them, where John Jones, the registered owner of stock, files a dividend order for the payment of dividends to Jim Smith, not for credit of Jones' account but an absolute assignment of the dividend. Fortunately, it is not a practice that is growing, but it is my humble opinion that it is a practice that we should use our best efforts to discourage. There are many features about it that make it inadvisable, and might I summarize that the registered holder of the stock might die, the corporation or its transfer agent have no notice to that effect, and dividends would continue to be paid to the assignee for a considerable period of time, when, to my mind, the one entitled to receive the dividends would be the legal representative of the registered holder and the assignee might be lacking in financial responsibility.

Reciprocal Tax Laws

THE reciprocal law movement in the matter of tax on the intangibles of non-resident decedents, is gradually gaining force and strength, and we now have thir-

teen states in that group, either through the adoption of laws placing them in the reciprocal group, or adopting laws such as New Jersey did last year, which took them out of the group entirely and made the intangibles of non-residents of New Jersey no longer liable to any tax in New Jersey.

At the last National Tax Association Conference in Philadelphia, to which I was a delegate from the state of New York, the report of the committee on this subject was very, very encouraging, and we rather hope—in view of the fact that the legislatures of forty-four of the forty-eight states of this great Union are meeting this year, some of which meet only every four years,—that laws or amendments to existing laws will be adopted in many of them, that will bring more of the states into the fold.

Some figures on this subject as to what the tax yielded to the various states might be interesting but I will summarize by stating that, the best figures obtainable in the year 1925 indicate that the total amount of inheritance tax collected by all of the states on the intangibles of non-resident decedents indicated a yearly total of about $5,400,000. Of this the amount received by the state of New York from this source was about $1,600,000, state of New Jersey about $2,000,000, and the state of Illinois about $500,000, and that the balance of this tax received by all of the other states of the Union was about $1,200,000, some of the states receiving as low as $24,000 yearly.

There are many features about the tax that those who are residents of the states that now have such a law upon their statute books might well give heed. Many prospective investors, coming to the investment divisions of the larger banks and trust companies, now ask questions as to the state of incorporation of a particular company, having in mind, of course, the state inheritance tax. This, some day or other, may resolve into something that will be a very serious question, in floating stock of various corporations.

Beware of Raised Stock Certificates

SOME of you may have observed upon stock certificates of those companies listed on the New York Stock Exchange—the certificates issued for less than one hundred shares, on the reverse side just back of where, ordinarily, the number of shares are punched out, a printed statement to the effect that Federal and New York state stock transfer stamps must not be placed on that end or side of the certificate.

The reason is this: About six months ago, some very clever gentlemen bought lots of two shares each in the stock of about thirteen different companies, using some seven different transfer agencies, obtaining in each instance two certificates of one share each, the stock all having a very substantial value, ranging from $120 to $180 a share, and these gentlemen with their two, one share certificates, hied themselves to balmy Florida. One of them entered into negotiations with an officer of a local bank, looking to the obtaining of an option on some local real estate. Finally, finding himself without sufficient capital, he broached the subject to the bank official of obtaining loans on Stock Exchange collateral. The bank official told him that it would be perfectly all right, if the stock had substantial value, and also if the stock certificates deposited as collateral were registered in the name of the bank official. All of that was done, and the loans were made to him at the prevailing rate in Florida, about eight per cent, and then the stock was sent by the banker to a New York bank and the loan rediscounted at the then prevailing rate of four and a half per cent. The Florida banker rubbed his hands in glee, he had made a wonderful trade, three and a half per cent, net to him, all "gravy," "Oh yes."

But one of the men in the loan cage of the New York bank noticed something peculiar about one of the certificates, and started an inquiry and found that every one of the certificates that had been put up as collateral for the loan had been raised, some to seventy-five, some to eighty-five, some to ninety; they raised them all the way along from seventy-five up to ninety-five shares.

The certificates when issued, in addition to having the amount of shares correctly stated both in the written-in part and the numerals, had the number of shares cut out of the scroll on the right hand side of the certificate and it was, of course, necessary that this cutting out be made to conform with the number of shares the certificate had been changed to.

Bear in mind that these people had two one share certificates of the same company. They cut out of one of the certificates the number or figure that they needed to fill in the space on the raised certificate and fitting it into the space originally cut out on the certificate, they pasted the stock transfer tax stamp on the back of the certificate over the original cut out, using the mucilage on the back of the tax stamp for the purpose of holding the inserted cut out in place. Some of them are mighty clever. (Laughter.)

Then what became of that one share certificate that they had mutilated? They took a match and burned the edge at the scroll and sent it back to the transfer agent and asked them to issue a new one in the same name. (Laughter.)

Now, my friends, to my mind, the one thought to be emphasized with reference to raised stock certificates is this, do not be so anxious to do business with a man that you are willing to take risks that are really not good business risks. In other words, in your loans or any transactions with individuals, be sure you know your man and know his financial responsibility. If you do not, I am afraid you are going to be in the same position as our friend in Florida and some of our friends in the Middlewest.

Incidentally, they caught three of these gentlemen in Florida, and put them in jail at Fort Meyers, and I understand they shot their way out.

The question is sometimes asked, "What is or what

are the most valuable attributes that a man can bring into the banking business?" I suppose one might write a book on the subject but I have a thought, if you will bear with me for a moment, that I would like to convey to you, that it seems to me might be a very valuable asset to us all:

"A smile costs nothing, but gives much.
It enriches those who receive
Without making poorer those who give.
It takes but a moment,
Yet the memory of it sometimes lasts forever.

None is so rich or mighty
That he can get along without it,
And none is so poor that
He can be made rich by it.

A smile creates happiness in the home,
Fosters good will in business,
And is the countersign of friendship.

It brings rest to the weary,
Cheer to the discouraged,
Sunshine to the sad,
And it is nature's best antidote for trouble.

Yet, it cannot be bought, begged, borrowed or stolen,
For it is something that is of no value to anyone,
Until it is given away.

Some people are too tired to give you a smile,
Give them one of yours,
As none needs a smile so much
As he who has no more to give." (Applause.)

CHAIRMAN MCLUCAS: I am sure these out-of-town bankers are glad to hear a New York banker talk about the value of a smile. Now the opportunity is open for questions of Mr. Condon on his subject, and we will give some little time to that.

Duty of Registrar re Transfer Requirements

CHARLES R. HOLDEN (Vice-President Union Trust Co., Chicago, Ill.): I want to ask a question on a rather elementary matter, that is, if the registrar finds that something is the matter with his own transfer agent, that it issues transfer of stock where the endorsement on the original certificate has either not been filled in at all or has been filled in by the secretary of the transferring company, what is the duty and responsibility of the registrar as to asking the question as to whether it has been correctly filled in or whether the transfer on a purely blank endorsement is warranted?

MR. CONDON: It is my judgment that the registrar has no responsibility as to the sufficiency of the transfer presented to him. That is solely and entirely the duty of the transfer agent. The customary resolution of appointment relieves the registrar from any responsibility as to the requirements of transfer having been complied with. It is the duty of the registrar to see to it that clean certificates are issued. I mean by that, that there be no sign of alteration on the face of the certificate either as to the name or the amount. Furthermore, I think the sole and the main duty of the registrar is to prevent over-issues. And as to the requirements of transfer having been complied with, it is solely the duty of the corporation, or its transfer agent. If the certificate on its face is poorly made out, in other words, the handwriting is susceptible of a double interpretation, or there are evidences of an alteration, then I think it is the duty of the registrar to refuse to register it, so that when the certificate goes out into the hands of the public, there can be no doubt as to what the certificate represents.

Cooperation of the Churches

SECRETARY MERSHON: Mr. Franklin is in the room, and we have asked him to make an announcement about a very important conference at Atlantic City. Mr. Lewis B. Franklin.

LEWIS B. FRANKLIN (Federal Council of the Churches of Christ in America, New York, N. Y.): Mr. Chairman, Ladies and Gentlemen: I am glad of this opportunity to make an announcement on behalf of the Committee on Financial and Fiduciary Matters of the Federal Council of Churches. You may not think that the churches have much to do with the trust companies, but I can assure you we are pretty good customers of yours, and we can be a lot better customers if you will help us.

We are going to have a conference, March 22nd to March 24th, at the Hotel Chalfonte, Atlantic City, to talk about our financial matters. We would be very glad to have any representatives of the trust companies there. Your Secretary, Mr. Mershon, is a member of our Committee, and he can give you all details.

I just want to indicate very briefly one or two ways in which our interests come together. In the first place, the Christian Churches of America are the holders of very large endowment funds; you are interested, as we are, in the safeguarding of those funds, in two important ways: first, in the physical custody of the securities. We have been hearing about some methods of crooks in raising stock certificates, and I can assure you that there are other methods of detaching even churches from their money. We are trying to avoid that end to bring you business by getting every church to deposit its endowment funds with a trust company, instead of leaving them in the hands of individuals.

The next way we want to improve our investment of endowment funds is to raise the character of investments, and there you can also help. It is quite startling to find that there is very little real stability in the method

of investing the great endowment funds of the churches.

Then, in the making of better wills: I had a will sent to me the other day, in which we were beneficiaries to the extent of $100,000.00, the trust having been accepted by an institution out of town, and the provisions of that will are utterly impossible of administration. In another case, where a trust company was too anxious for business and was thinking of the fee rather than of the execution of the trust, the will cannot be executed, in my opinion. If you will help us a bit in being watchful that wills are made properly, and in the receiving of trusts, and let us hear from you as to whether they can be executed, our Committee has information about all of the Church Boards and can give you help in that respect. We will be very glad to welcome you at that conference. I thank you.

CHAIRMAN MCLUCAS: Mr. John C. Mechem, Vice-President of the First Trust and Savings Bank, of Chicago, will tell us something of the recent transactions of the Chicago trust companies on the important subject of safekeeping of securities.

Why Charge for Safekeeping of Securities?

By JOHN C. MECHEM

Vice-President, First Trust & Savings Bank, Chicago, Illinois

MR. CHAIRMAN, Ladies and Gentlemen: Some days ago, Mr. Mershon sent me a wire asking me to talk for ten minutes on our recent Clearing House rule in Chicago, requiring that a charge be made for the safekeeping of securities. It is somewhat of a surprise to me to find it appearing in this formidable way on the program. My title is "Why Charge for Safekeeping of Securities?" It seems to me the answer is very simple—the answer is that a charge should and can be made. I think that is all the answer it requires.

Reason for Rule

WE in Chicago, have had in our minds for a long time, in fact, as long as I can remember, this question of securities deposited in the bank for safekeeping, and upon which no charge is made. For instance, in our institution, which is a combination of the commercial bank and the trust company, we have, to begin with, large blocks of securities held in the commercial bank both for correspondent bank customers and individual customers. We have large blocks of securities held by our bond department—securities that had been purchased from the bond department and left with it under the assumption that they were going to be taken out, but which were not taken out; then in the trust company, we have had the securities which we were holding in our fiscal agency account and upon which we were making a charge.

As long as I can remember, we have been debating that situation and trying to do something about it. We have been actuated by three main considerations; first of all, the enormous volume and the consequent expense; secondly, the fact that we were in direct or almost direct competition with our own trust department, and, thirdly, by the fact that our good friends in St. Paul, Minneapolis, and Milwaukee, particularly, have been anxious for some time to put such a rule into effect, and feeling that they could not do so until the Chicago banks did, have been urging us to act.

Naturally, it would be impossible for any one bank in Chicago to put such a charge into effect without the other banks doing so. Therefore, the matter was taken up by the Clearing House Association and a rule established which is binding on all members.

I do not know exactly how many securities were being held in Chicago, free of charge, but it is a safe estimate, I think, that there were certainly six or seven hundred million of them held by the downtown banks.

I would like, if you please, first of all, to read you the rule as passed by our Clearing House, and, therefore, binding on all members and associate members.

Text of Chicago Rule

"ON and after January 1, 1927, no member of this association and no bank or trust company affiliated with this association, shall hold for safekeeping or as custodian any securities in which said member bank or trust company has no interest, exceeding in face value the sum of $5,000 (or in the case of stock having no par value exceeding 100 shares), belonging to any bank, individual, firm or corporation, for a longer period than three months without making a charge for the same for the full period held at per annum rates, in accordance with the following schedule:

"(A) on mortgages, and on bonds and corporate notes, or obligations of similar import, one dollar per thousand face value on the first $1,000,000 and seventy-five cents per thousand on the excess over $1,000,000.

"(B) on stocks, fifty cents per $1,000 face value, and five cents per share on no par stocks, up to and including

$1,000,000 par value; on the next $1,000,000 thirty-seven and a half cents and three and three-fourths cents respectively; on the next $1,000,000 and upwards, twenty-five cents and two and a half cents respectively.

"Where a charge of $125 in any one calendar month, or at that rate, shall have been made by any member or affiliated member of this association to any bank, individual, firm or corporation for the safekeeping or custodianship of securities, further charges for said month to such bank, individual, firm or corporation shall be discretionary.

"Where obligations having a maturity of no more than twelve months are left with a bank for the purpose of collection and credit to a depositor's account, charges shall be discretionary.

"Charges on securities held for account of charitable organizations shall be discretionary, but in no case less than one-half of the regular rates specified in this rule.

"Charges on securities, other than United States Government bonds, notes and certificates, sold by the safekeeping bank or trust company and held for the account of the purchaser, shall be discretionary for a period of six months following such sale, except that charges on temporary bonds and interim certificates sold by the safe keeping bank or trust company shall be discretionary until such time as said temporary bonds and interim certificates become exchangeable for permanent securities."

This rule was worked out by the commercial banks in conjunction with the trust companies, and represents a very reasonable and workable compromise of the situation. These rates correspond up to approximately $2,000,000 with the trust department rates, with the exception that the trust departments make an additional charge on mortgages, which additional charge is not made in this rule. The reason is, that as a practical matter for the commercial banks, mortgages are not an element in the situation. There are practically no straight real estate mortgages deposited with the commercial banks.

As you notice, the rule says that the charge shall apply to securities held for a longer period than three months. The rule went into effect the first of January, and the three months will not expire until the first of April. It is, therefore, impossible for us to tell exactly what the results of this rule are going to be, until that time.

We have found however very little opposition to the introduction of the rule. We have not lost a customer, and we have had a great many comments on the fairness of the rule. There has been some little question about the size of the charge, but, obviously, if we are going to make a charge, we must make a charge comparable to the trust department charge. It is one thing to be in competition with your own trust department free, but it is quite another thing to be in competition with your own trust department on a small differential of charge. In other words, if you are going to charge at all, it ought to be comparable with the trust department charge.

Questions Arising

THERE have been one or two questions of interest. The first has been the question of the liability assumed. Our old custodian certificate, issued by the national bank prior to the rule simply said that the individual or bank "has deposited with the First National Bank of Chicago, for safekeeping, the following described property:" Endorsed on that receipt was a statement that we agreed to give the securities only the care we gave our own. The Federal Reserve Bank is advising its customers that it takes no responsibility for securities on deposit with it. I do not think that is anything new, but we have had, of late, a good many letters from customers who have asked that question of the Federal Reserve Bank, and have had a reply saying that they assumed responsibility. They are, therefore, interested in the amount of responsibility which we will now assume.

This is, of course, the same question which has arisen for years in the trust department. In our trust department, as a matter of practice, we have exempted ourselves from liability for "acts of God, or the public enemy, and acts of agents outside of the bank whom we have chosen with proper care." I think those few exemptions are of very little importance. As a matter of practice, the First National Bank is assuming full responsibility.

The other question that arises is on the construction of the rule which says that charges shall be discretionary where obligations have a maturity of no more than twelve months, and are put in for collection: That was intended to cover only short time securities. It was not the intention that the provision apply to that portion of a depositor's long time securities which mature each year.

There has been some question of the manner of handling. After all, all securities are deposited for ultimate collection. Some banks are putting such securities into their collection department; some are keeping them in their safekeeping department; some are keeping them in the safekeeping department and marking the receipts "Entered for collection."

In general, as with all rules of this kind, where it says that "charges are discretionary," the result will probably be that no charge will be made with the exception of charitable organizations where it is intended that the charge shall be half of the regular rates.

We have a large volume of securities on deposit in our bond department. We are making a charge on these securities and we expect in the course of time to work out of the bond department all securities except securities that are simply held there for a week or a month, pending the convenience of the customer.

We feel, in Chicago, more than happy about all this. We do not know exactly how it is going to result, but we do not think any of the banks are going to lose any

customers and we think we are going to get a fair and proper charge for this large volume of work that has been done in the past, free. And we think we have done a great thing, Mr. Chairman, in correcting what we think has always been an abuse.

CHAIRMAN MCLUCAS: I know this is a rather new subject that might prompt a good many questions and a good deal of discussion. We will give the opportunity for a few questions, if you wish to ask them, without taking up too much time. Mr. Mechem, will you answer a few questions?

DELEGATE: I am interested in asking Mr. Mechem whether the non-member banks of the Clearing House have followed this practice, although not being bound by the rule, and what his experience has been?

CHAIRMAN MCLUCAS: Have you any non-member banks there?

MR. MECHEM: Not enough to be an important element in the situation. This rule applies to members of the Association and associate members. I have not heard what the non-member banks are doing.

(Adjournment)

Second Session

Wednesday Afternoon, February 16, 1927

MR. McLUCAS, presiding.

CHAIRMAN MCLUCAS: Gentlemen, please come to order. The first subject for discussion this afternoon, is, "Business Insurance—Open Forum with Trust Officials and Life Insurance Underwriters Participating." It was contemplated that this discussion should take up the use of insurance in protecting closed corporation partnership and stockholder interests. Mr. McDouall will lead the discussion; Mr. Connell, for insurance men, will participate and likewise the members of the Committee on Insurance Trusts. Mr. McDouall, will you lead the discussion?

The Business Life Insurance Trust

By LESLIE G. McDOUALL

Assistant Trust Officer, Fidelity Union Trust Co., Newark, N. J.

MR. CHAIRMAN, Ladies and Gentlemen of the Conference: In order to give the clearest presentation to the new development known as the "Business Life Insurance Trust," I shall have to give a concrete example, and no better way occurs to me than to give, in a general way, leaving out names and type of business, the problem brought to the office of the Fidelity Union Trust Company about a month ago.

The question paramount in the caller's mind was, what plan or arrangement could he make which would afford a protection to his family in the event of his death and how could the business be continued by the two surviving partners without interference from outsiders who might be unfamiliar with the affairs of the corporation, and without financial loss or detriment to the business—a "close" corporation.

As the man said, his eggs were practically all in one basket—his business—a fine going concern whose success was due primarily to the aggressive efforts, business judgment and capabilities of his two partners and himself.

His call, he said, early in the interview, had been prompted by an experience which had made a distinct impression and which had brought home the seriousness of his present situation.

A Deplorable Case

TWO years ago, he related, his brother was connected with two men in a rapidly growing business. His brother controlled a half interest. He had been largely responsible for building the business up to the point where it was at that time. The three men had agreed upon a valuation of the stock in the "close" corporation and had an understanding that should any one of them die the survivors would continue to devote their time and efforts to the business to enable the beneficiaries of the deceased stockholder's estate to receive a fair return on the capital remaining in the business. The brother died suddenly. His estate was composed largely of his holding in the business; his family was dependent, therefore, upon the income which the corporation earned. The two surviving partners felt that the burden thus thrust upon them was more than they could cope with.

The loss of the brother's executive ability, his judgment, and his alertness against the uncertainties bound to arise ever so often in that particular line of business, was a severe blow to the surviving stockholders. Within a short time after the brother's death, it was deemed advisable to wind up the affairs of the corporation. This action resulted in the brother's estate realizing from his business but a small fraction of the figure he had so often discussed with his wife and family as what, in his estimation, his share in the business was really worth.

For such situations, the "Business Life Insurance Trust" is ideal, and I am attempting briefly to describe it. The plan assures a man that his estate at his death will receive a price on the stock in his "close" corporation which he himself has fixed during his lifetime.

Business men have entered into agreements of every nature with their business partners with the thought of protecting their dependents. They have made verbal agreements and written agreements; have taken out life insurance on the partners' lives in favor of the corporation and have had the premiums paid by the corporation. All of these arrangements are sound in a limited way, but do not cover every possible emergency which may crop up. A plan of this character must be completely air-tight.

A Plan Eliminating Forced Liquidation

THE "Business Life Insurance Trust Plan" gathers together all the threads of the particular circumstances involved in the corporation and weaves them into an arrangement which covers every possible emergency. In other words, such a plan eliminates every chance of loss through forced liquidation of the business and the almost certain probability of there being no ready market for the "close" corporation's stock upon the death of any partner.

Let us assume that A, B and C are stockholders in a "close" corporation, X, each of them owning one-third of the stock. The business is dependent upon the partners' intimate technical knowledge of the market conditions for the product, upon their management and personal connections, and upon their trained judgment. The net worth of the corporation is $75,000,000.

One or more of the partners may die and their estates become involved. Therefore, a mutual agreement of A, B and C is desirable to continue the business as effectively as possible in the event of such a contingency.

This agreement involves the selection of an impartial trustee, whose duty it is to carry out the provisions as set forth in the trust agreement. Through the appointment of the trust company in the capacity of trustee for such an agreement, those involved in the business are assured that their wishes and intentions as set down in such a plan will be properly administered. Cases have arisen where a private agreement has existed between partners that the simultaneous death of two of the partners, or the temporary financial embarrassment of one of the survivors, has caused the failure of the plan.

Such a plan provides that upon the death of either A, B or C, the surviving partners will purchase from the decedent's estate his share of the stock, the decedent's estate in turn receiving an immediate cash payment, or if this procedure is not advisable, to spread the payments by the survivors on the stock over a period of five years. This policy permits the surviving stockholders to continue operating the business with little inconvenience to themselves, it permits them to retain control of the business through their purchase of the decedent's stock without the pressure or obligation entailed by the entrance of a new partner, and it eliminates the necessity of a forced sale of the decedent's stock at a sacrifice in which his estate might shrink considerably.

How is this financing to be accomplished? Through the purchase of insurance in the amount of each partner's interest in the business on the other two partners' lives. That is A would insure the lives of B and C for $12,500 each. A paying the premiums; B would insure the lives of A and C for $12,500 each, B paying the premiums; and C would insure A and B for $12,500 each, A paying the premiums making a total of $75,000 insurance which represents the value of the stock of the corporation.

The insurance thus carried on each partner's life by his other partners is made payable to the trust company, as trustee.

A Typical Agreement

A TYPICAL example of an agreement between A, B and C and the trust company as trustee would provide that:

(a) Upon the death of any of the above partners, the insurance company will pay to the trustee the proceeds of the policies so carried on the life of the decedent.

(b) The money so collected shall be applied toward the purchase of the decedent's stock held by the trustee. (For example, if A died, his estate would receive $25,000 in cash and B and C would each receive $12,500 worth of stock.)

(c) If the amount of stock should exceed the life insurance, then the remaining stock will be either turned over to the executor of the deceased partner's estate or retained by the trustee and some provision made for the surviving partners to purchase this stock over a specific length of time.

In addition to these clauses there should be further steps necessary to properly execute the agreement. These are:

(a) Each partner shall transfer and assign his stock in the corporation to the trust company. The trust company shall cause such stock to be transferred on the books of the company to its name as trustee.

(b) The trustee shall execute and deliver to the above partners proxies for the shares of stock so assigned, and it shall execute and deliver any subsequent proxies or authorizations which shall enable the partners to vote upon any and all matters on which a stockholder may vote, and to do any and all acts in connection with the management of the corporation as they could do if the stock stood in their names on the books of the corporation.

(c) Each party agrees to sell his stock to the survivors and the trustee is empowered to effect such transfer.

(d) The selling price of the stock shall be determined by a written notice filed annually or more often with the trustee and signed by the partners at interest.

Such an agreement as outlined above is subject to revocation at any time by the parties upon their filing written notice thereof with the trustee.

The business life insurance trust arrangement is de-

vised primarily for the partners of a corporation where the stock is closely held and where it is desirable to arrange for the sale of any deceased partner's share in the business to the surviving stockholders. The insurance thus taken out provides the cash necessary for such a purchase and is intended for no other purpose; the control of the business passes to the survivors upon the death of any member of the firm and eliminates any outside interference; the estate of the deceased partner is guaranteed a fair and immediate liquidation of his share in the business; the burden of continuing the business for the benefit of a deceased partner's family is lifted from the shoulders of the surviving partners; proper administration of the trust is assured by delegating the actual execution to an impartial trustee; it eliminates any possibility of the surviving partners being forced to liquidate any personal investments to provide cash with which to purchase any deceased associate's interest in the business; there is an annual (or more often) adjustment of the value of the corporation's stock so that each party involved may know definitely and periodically what his estate and family may realize in the event of his death; and finally, the agreement provides that the survivors may purchase from the deceased partner's estate policies which he has carried on their lives by paying the then cash surrender value.

From personal experience, I know of many stockholders in "close" corporations who have had their problem solved by the use of such a plan.

CHAIRMAN MCLUCAS: Let us hear from Mr. Connell, from the insurance angle.

Some Recent Problems of the Life Insurance Underwriter

By CLANCY CONNELL

General Agent, Provident Mutual Life Insurance Company, New York, N. Y.

MR. CHAIRMAN, Ladies and Gentlemen: I am not prepared to make any formal speech, because I was asked only a short time ago to substitute for Mr. John G. Reinhard who was unable to be present.

Mr. McDouall, whose prowess we, in the life insurance business, know a great real about, and the company of which he is an officer, have been most progressive in helping to bring about a very satisfactory and helpful relationship between the trust companies and the life insurance representatives. That subject will be very ably handled by Mr. Winslow Russell, later, but I think it is due that something be said of the Fidelity Union Trust Company, by us in the life insurance business and I believe our appreciation is shown in more than words. Mr. McDouall has handled this whole question very ably and I know, from the standpoint of the life insurance agent, we welcome the kind of cooperation which has been shown.

Use as a Stop Gap

MY own experience and such knowledge as I have from contact with our men, indicate that there are usually about three situations to be met. In the first place, we frequently have to use business life insurance as a sort of "stop gap." I like to bear in mind that it may be the proprietor of a shoe-shine parlor, a delicatessen shop or a drug store, or it may be the very large corporation, which needs business life insurance on the lives of some of its principal officers. In any event, business life insurance, if it be in sufficient quantities, can have a very beneficial influence upon business and the community as a whole, if, first of all, it will establish the credit and maintain a business as a going concern. It enables many small businesses so to adjust themselves that it greatly improves the possibility of the business continuing on a successful basis. As I pass on the elevated trains, I see so many signs, "Business sold out because of death of one of the partners." Even a modest sum of life insurance might have changed that condition, particularly in relation to the small business.

Take the case of a friend of mine, the president of a sales organization. The amount of life insurance he has purchased, running up to about $65,000, will enable that business, having no plant nor fixtures and a comparatively small office, to liquidate at the President's death; the interests of his wife and heirs will be protected; and the men associated with him in the business can go on, or, if they decide to close the door the day after his death, there will be no loss to anybody, as there will be immediate cash funds.

Protection to Stockholders

MY second point is that business insurance should be used to protect the interests of stockholders. Not long ago, there was a rather large advertising agency in the City of New York, which had a considerable number of stockholders besides the active officers in the business. They insured each of the lives of six men in the company, for $100,000. That was at a time when we had not thought of going to a trust company for such a

purpose. I can conceive that in large corporations there might be some man who is of particular value; for example, a chemical manufacturing plant's chemist, who has peculiar knowledge of that plant and possesses important secrets; or a man who is a wizard on finances; it would then be to the advantage of all the stockholders as well as the officials of that particular company to have that individual's life insured so that upon his death, his services could be replaced by a man of somewhat equal ability.

Even the great corporations, I think, as the years roll on, will consider this form of protection. I hope the time will come when national bank as well as trust company officers will see it also. In other words, it may be the man who maintains credit relations for a company; it may be the man who is primarily responsible for the business getting; it may be the man who, through his knowledge, is primarily responsible for production; or it may be an "expert" in the business, whose life should be insured.

I am delighted that Mr. McDouall's presentation came before mine, because I want to tell you, from the standpoint of a life insurance underwriter that, time and time again, I have been very much embarrassed in arranging life insurance for business purposes, when it was necessary to make an arrangement providing for stock control in some way or another, at the death of one of the principals of a business—I hope there are not many lawyers in the room. What I have been up against is this: I will provide forms that have been in use in certain states, for entering into such agreements for control of the stock, then say, "I am not going to get in over my head on this thing. I think I know a little about life insurance but I cannot qualify as a lawyer and, would, therefore, suggest that you get in touch with your lawyer." Some of those interviews are terrible. The average lawyer knows as much about what we are driving at as the man in the moon, and there is nothing that could be welcomed more from our standpoint than facilitating these matters so we can continue the work we are doing on personal trusts.

Charitable Bequests

DURING the next ten years we are going to hear a great deal more about the use of life insurance for charitable and philanthropic purposes. I suppose Mr. McDouall, as usual, is about a mile ahead of us. He may have been thinking about this and many others of you likewise, but I would like to see the time come speedily when it will be realized by the insuring public that life insurance, if properly handled, is the ideal way to arrange bequests and for people to continue a certain benevolence, whether they have endowed it or whether they have made current contributions to it for some particular purpose. Suppose a man has been contributing $1,000 a year to a hospital; it requires the purchase of only a $20,000 life insurance policy, at five per cent, to make a perpetual contribution to that particular charity or philanthropy in which he is interested.

I think if some of you get together with some of the livest of the insurance men in your respective communities, you will both agree that there is an opportunity for business and for contacts. We are just as much interested in making contacts in our business, and I presume you are, as we are for the actual business we will get.

Soliciting by Trust Companies

I AM going to wander for a moment from my subject, if you will permit me. There are so many ways that the trust companies and life insurance companies can get on so happily and mean so much to each other, both personally and in a business development way, that it seems to me it would be a pity for anything to come up that might upset in the slightest degree the happy relations which seem to prevail. I am going to be perfectly honest. I know quite a bit about what the man in the field thinks, when word comes to him that a trust company is arranging to have a special insurance department that is going to solicit life insurance of customers of the bank. He rather shakes his head. That has not been a wide-spread idea but we are a little afraid.

Furthermore, there has been a great deal in the newspapers and insurance journals recently about the practice of solicitation, of a certain firm in combination with a funded trust agreement. Now in this plan, we think, unfortunately, that it has been stated to the public more or less as an axiom that it would be necessary to change policies in order to bring about such a trust arrangement. Frequently that has worked to the disadvantage of the original underwriter, because it reflects on his judgment for another to come along and ruthlessly advise that original forms of policies be changed.

We may make mistakes, even the officers of trust companies may sometimes make mistakes but I think we are much more apt to. We are in a business where we are heir to lots of mistakes but we shall do our best, I am sure, as men, to recommend the form of policy which seems at the time, in our judgment, best to suit the prospect's needs. If it has to be changed, we would like to change it and to maintain that contact; but a wholesale changing of policies will, we believe, in the long run work disadvantageously both to the life insurance company and the insuring public and possibly, in the process, to the trust companies. At present they are not a party to this at all but I just wanted to mention it so that possibly, if it becomes general, you will remember what I said and be on guard against it.

CHAIRMAN MCLUCAS: Mr. McDouall, will you call on any member of your Committee whom you want to hear from?

MR. MCDOUALL: I think Judge Hennings of St. Louis, might add something to what has been said.

Stabilizing Business

THOS. C. HENNINGS (Vice-President, Mercantile Trust Co., St. Louis, Mo.): Mr. Chairman, I will say, for the information of the last speaker, that the national banks throughout the country have taken up the question of writing life insurance trusts with as much keenness as the trust companies. The insurance men and the fiduciary men in banks are working harmoniously in every community in which the life insurance men understand what the trust men are trying to do. I will say furthermore, for his information, that if he will get in touch with Dr. Anthony, who is going from coast to coast and from the Gulf of Mexico to the northern boundary of the United States, that the question of charitable trusts is being brought to the attention of right thinking men throughout the United States. It is not a very new topic, except by comparison.

That the life insurance trust is a benefit to business, as stated by Mr. McDouall, is self evident. It stabilizes credit and gives a close corporation, a standing it would not otherwise have. In case of the closed corporation where the stock is held by a widow or by a trustee, at the death of the owner of the stock or the partner of the business it gives the survivors an opportunity to purchase that stock and continue it with all life partners.

We have a trust which is peculiar in this respect: The president of the company, realizing that his activity in the business was of considerable value, provided for the deposit of $100,000 of life insurance, the proceeds of the policies after his death to be paid to the owners of the common stock. Now, instead of purchasing the stock of any stockholder, each stockholder receives a portion of the life insurance. In a case where there are three or more stockholders, each of whom wishes to arrange for the sale of his stock after his death, the policies are payable to the remaining stockholders, the premiums upon each policy being paid, of course, by the other stockholders or the other partners; upon the death of one, the proceeds are used for the purpose of purchasing the stock of the deceased. But it is necessary, when that is done, to provide that the survivors may purchase the interest of the deceased in the policies of the survivors by paying a cash surrender value that the deceased owned in the policy of the survivor.

This business is growing, its ways and means are infinite, it provides a great field, and I believe the insurance men throughout the United States realize that the trust men in national banks and trust companies are all working toward a common purpose, and that is for the benefit of stabilizing business.

CHAIRMAN MCLUCAS: May we hear from some other member of the Committee, Mr. McDouall? Judge Holden, can we hear from you?

To Provide for Future Cash Value

JUDGE HOLDEN: Mr. Chairman, there are two or three factors that are found in the practical application of this subject of Business Insurance, that are very necessary to consider. In the first place, you have to consider always that every case will be very largely individual, in the aspects that it presents and in the problems that have to be solved.

If you have a close corporation, in one instance, that has been advising with the underwriting insurance men, where one of the three men in the business is in the twenties and the other two in the thirties, you are tentatively on the mere expectancy of life, dealing with the proposition of what will be determined as the probable value of that stock some twenty or thirty years after the date at which you are trying to draw an agreement. That means a very difficult thing to arrange on any "rule of thumb" method as to what should be applicable to that particular case.

I think that you ought to realize, in dealing with every case of this kind, that the insurance problem should be left to the insurance man; the legal aspects to the attorney; and the only real function in regard to those two aspects of the matter, on the part of the trust officer, is to be sure he knows enough about the insurance end to see that the insurance man does his part of it right, and he knows enough about the law end of it to see that the lawyer does his part of it right. Now, that necessarily implies, perhaps, a considerable knowledge of the subject, and it also involves the use of a good deal of tact, not to reveal to the others that you think you know more about it than they do.

Even if, in principle, you follow the lines of least resistance and maintain that form of insurance where the insurance is payable to the corporation, itself, if you have a good attorney on the job, you are going to require a trust, in order that you may have an actual option, enforcible by the surviving stockholders, to buy the stock of the one who is deceased.

We recently, had quite a spread in the newspapers about what the increased value of stock of a certain corporation has been, the more or less problematical value per share of seventy-five or perhaps one hundred and twenty-five thousand, something between a billion and a billion and a half, in the last twenty years. Now, just imagine the pickle that an insurance man or trust officer would have gotten into, if they had tried to arrange, twenty years ago, for funding the interest in that stock at the end of the twenty-year period. You could not have adopted, perhaps, a mere "rule of thumb" book value.

In the instance I have in mind, and some of you may have guessed it, there has been a certain amount of bitter litigation as to what the value was, even in the minds of some of the people who have been in the company. It might have been a difficult situation if the trust company had had deposited, each year, an agreement which

would have required that the stockholders remain harmonious for twenty years. And lacking in any year such an agreement that would fix such a purchase price, you have to provide for some alternative mode by which you will have a legally enforcible option, so the estate may be bound to sell out, as well as somebody to buy, and have the funds to buy with; because from the bank's standpoint, and most trust companies have a banking leaning —what you are working for is to guard a commercial customer against being semi-paralyzed by having to use its working capital to buy out the estate of a deceased stockholder. Or, on the other hand, you are not going to have that source of strife injected into a comparatively close corporation when you ask the surviving live ones to work for the relatives and friends and beneficiaries of the dead one. Too many fathers make that mistake, trying to make their sons work for their daughters.

But, if you can provide on the basis of a proper trust, supporting a proper option, with sufficiently elastic means to obtain a fair cash value to the estate of the deceased, with added security based upon the stock being worth not only what it has earned in the past but upon the future of the business, then you have a sufficiently important and a very serviceable instrumentality for dealing with that element of corporate affairs.

A Few Cautions

MAY I close with just one other suggestion: Do not bother too much, and certainly, do not base the controlling motive in any such transaction as this upon either inheritance or income tax elements. The government experts at Washington are getting rather comprehensive in their views. This plan might appear to be one of one man insuring another man's life and paying the premium, where there is not any inheritance tax; but where there is the realization of $200,000 assets from insurance on deceased, and that given an added value to the estate's stock, that increased value of $200,000 is the basis of the inheritance tax. There is a ruling of the Department to that effect. If you paid the premium out of the corporation assets, you have a possible advantage. See an income tax attorney on that. Every attorney is not an income tax expert, but every income tax expert should be an attorney. You want to get the combination.

There is a considerable argument, as the law now stands, in having this thing amount to a liquidation of accumulated capital in the corporation, when the payment is made for the stock, so you have a capital gain instead of a current income gain, but all those things are only incidental and can only be analyzed provisionally as to what the present application of the law is. Your main element must be this double-edged purpose of, first, not crippling a corporation by taking the assets out of it to meet the necessity either to get rid of or to liquidate an estate; and, secondly, that you may have a method by which an estate may be assured that it will receive a fair and a proper measure of liquidation from a corporate or partnership enterprise, without being subjected to that source of bitterness that always arises where the asset of the estate has to stay in the corporation as a minority interest, and the question of whether salaries of the living are fair to the dead, and all that sort of thing.

The whole matter of corporation insurance, of business insurance is one the surface of which I feel has hardly been scratched. How many of your corporate patrons have more or less ill-digested pension systems, retirement systems, disability systems, all involving and being based upon insurance elements, and how far—if you go to the average insurance agent—will you find that the machinery has been provided for the proper participation by insurance companies, rather than the corporations themselves, in carrying those insurance elements?

And so, what you have here is really a provision for a retiring provision, based on insurance elements, to care for those factors in a business which ought not only to have the assurance of being retired at a fair price, but also that the business itself should be assured of not having to carry on with a load and a burden of dead timber.

CHAIRMAN MCLUCAS: We can devote a few minutes to questions. Has anyone any questions he would like to propound on this subject?

Fees

H. L. STANDEVAN (Vice-President, Exchange Trust Co., Tulsa, Okla.): I would like to ask what is the basis for charges made by the respective companies. First, when the insurance trust is lodged with the trust company; second, if it is withdrawn; and third, if there is a change made in the trust by either the placing of other policies with the trust or the changing of its terms in any way; and if there are charges, about what they are. I do not know whether the Trust Company Division has agreed upon a basis for fees or not.

MR. MCDOUALL: I can only tell you what we at the Fidelity Union Trust Company do. For the administration of a business life insurance trust, we charge first, a minimum annual fee of from $25 up, depending on the size of the trust and when the policies mature as death claims, there is a charge of 1½% on the first $100,000, and 1% on higher amounts. If the trust be revoked during the lifetime of the parties, there is a charge of $25 and up.

SECRETARY MERSHON: Mr. Chairman, I might inject a thought in regard to Mr. Connell's reference to insurance men encroaching on the prerogative of the bar. I think it is quite apparent that the insurance organizations need a Committee on Cooperation with the Bar, like that of the Trust Company Division.

As to selling life insurance by banks and trust companies, our Committee on Insurance Trusts has already taken a stand against that, and it is quite likely that before very long they will send a communication to all of the members, discouraging that practice and asking them

to refrain from setting up an insurance agency within their own companies and banks.

CHAIRMAN MCLUCAS: "Anyone here wish to discuss the trust from that point of view? If not, we shall pass on to our next subject, "Academic Freedom or Academic Truth." I have not much conception, myself, of what it is all about, but I know the man who is going to present it will ably enlighten us. Mr. Francis H. Sisson, Vice-President, Guaranty Trust Company of New York, our President of last year.

Academic Freedom or Academic Truth?

By FRANCIS H. SISSON

Vice-President, Guaranty Trust Company of New York, New York, N. Y.

MR. CHAIRMAN, Ladies and Gentlemen: May I say that this subject was assigned by the efficient Manager of the Trust Company Division and not by the speaker. It is considerably more stylish as a subject than the presentation will warrant in its substance.

While I was running over these facts and figures which have been given to me for presentation to you, I was reminded of a story that Premier Hughes of Australia, told in relation to Lloyd George, which seems to me to present a text that is much more fitting than this rather academic topic which Mr. Mershon has chosen.

In a little dinner conference, somebody asked Premier Hughes to give his impressions of Lloyd George, and the Premier thought it over and said, "Now, I will tell you. He is one of those fellows who will never stand any damn nonsense from a fact." (Laughter.)

We have run up against a situation of that sort in the Trust Company Division, and I regret exceedingly to say that the origin of this difficulty comes from my own Alma Mater, Harvard University, and so I cannot be accused of being unduly bitter toward that institution, not being a Princeton man. (Laughter.)

It transpires that the Graduate School of Business Administration at Harvard, during the past year, republished a book which I was surprised to find had been in existence in other editions over a period of four or five years, by Professor Dewing, of the Business School, on "The Financial Policy of Corporations." In connection with his discussion of that subject, Professor Dewing has seen fit to make some comments about trust companies and the manner in which they discharge their functions, which are uncomplimentary as well as untrue.

The attention of several of the officers of the Division was called to this particular situation, and one of my friends from the far Southwest wrote me the first letter I received about it. I immediately wrote to Dean Donham, of the Harvard Business School, who happened to be a personal acquaintance and perhaps I can give you this discussion as some of our motion pictures are sometimes presented, in a series of episodes, the first being a letter which I wrote to Dean Donham, last December.

"New York, December 15, 1926.

"My dear Dean Donham:

"My attention has just been called to a book published by the Ronald Press on 'The Financial Policy of Corporations,' written by Arthur Stone Dewing, Assistant Professor of Finance at Harvard University. There are several statements in the book which banks and trust companies certainly challenge, and which I am confident you would also question. I quote from page 282 and page 1203:

"Page 282

"'One must deplore the fact that many national banks and stock brokers have added to their regular business, the business of the investment banker. The institutional bank, especially the small local trust company, is in no position to become a merchant in securities, much less undertake to promote or finance new enterprises.'

"Page 1203

"'A series of investigations has been undertaken through a study of the probate records, of the success of trust company and lawyer-trustee administration of trust funds, which passed into fiduciary control before 1900. Owing to the comparatively few large trust funds which passed into trust company control before 1900, the studies had to be extended to include those which began to be administered after the turn of the century. Four such studies have been made, each dealing with from four to eight trusts. The original value, the income and the appreciation or depreciation down to 1924 was carefully computed. With a single exception of one trust administered by a small suburban trust company, every one of the trust administered by a trust company, show a conspicuous depreciation of principal. Nor was income commensurate, for the short return throughout the period of fiduciary control, in practically every case, was less than 4¾%. These trust companies expend large sums of money each year in advertising their ability to safeguard the funds of the widows and or-

phans. Their advertising material is designed to bring tears to the eyes of those who would have their estates administered by private individuals. While a totally inadequate number of trusts have been studied to enable one to permit broad generalizing concerning the ability or lack of ability of the professional trustee, the few that have been studied do not excite admiration.'"

. . . In spite of the tribute which the writer pays to your Publicity Committee, in regard to "bringing tears to the eyes," we propose to challenge that statement, and I have written:

"The comment in regard to trust companies is particularly unwarranted and inaccurate, as I am sure you will agree. The writer could very easily secure comprehensive figures on the service of trust companies, the results of their investments, etc., by applying to the Manager of the Trust Company Division of the American Bankers Association, and the broad generalization to which he commits himself is utterly unjustified.

"I do not know that anything can be done about this matter, but both as a Harvard man and as a trust company officer, I regret exceedingly that such matter should be given circulation. Incidentally, as a mere lover of truth, I resent the broadcasting of such unsound utterances. Of course, the whole trust company and banking world would be up in arms about it, if it were called to their attention. It is fair to state that I have only heard about it from a few sources, as yet, but in a field where one can so easily learn the facts, I cannot understand how the writer could have allowed himself to be so misled and to do such rank injustices to one of the most important developments of modern financial service. Is there anything we can do to minimize the damage of such statements?

"Yours sincerely,
(Signed) FRANCIS H. SISSON,
"Vice-President, Guaranty Trust Co. of N. Y."

I received then, shortly afterwards, this letter from Dean Donham:

"Cambridge, Mass., December 24, 1926.

"Dear Mr. Sisson:

"I am in receipt of your letter of December 15th. I shall be glad to write to the Manager of the Trust Company Division of the American Bankers Association for the results of their research, and when I get it, shall bring the subject to Professor Dewing's attention. It is one in which I am very much interested.

"I am inclined to believe that the early records of the trust companies, as I know them, were not very satisfactory."

. . . I may say that Dean Donham was Vice-President of the Old Colony Trust Company of Boston, prior to his going to Harvard in charge of the Business School, so he knew something about the facts of this particular line of business. . . .

"I shall be glad to get up-to-date and to have this judgment changed, if the facts justify it. I know that their early experience in Massachusetts was unsatisfactory. Some local questions of tax matters affected them, but the record was also caused in part by the failure to organize the subject properly. Does not this failure to organize properly still persist in a good many quarters?

"I have not talked with Professor Dewing and, therefore, do not know, but I expect to find upon talking with him, that he has the feeling, which is shared by many, that corporate trustees too frequently fail to approach the problems of investment and trust departments with the same competent attention and organization that similar problems get in their older deparments. In making these statements, I am aware that there are many exceptions, but I suppose you would agree that the choice of a particular corporation as trustee should be approached through a serious study of the organization of the particular trust company which is under consideration. I am not so disturbed as you apparently are by criticisms like Professor Dewing's, because I think that they serve to raise the standards of the organization, and I have no doubt that the standards of a great many companies need to be raised.

"As to the investment business, I am inclined on the merits to agree—certainly in the case of small local trust companies—with Professor Dewing's appraisal. I know too many and have too little confidence in their equipment to give the kind of advice which should be connoted by investment banking. I make a clean cut distinction between the companies which go into this business according to how they equip themselves. I am conscious of serious problems involved in the situation which they do not all, or nearly all, satisfactorily handle. I often wish that some of the large companies would be a little more careful not to place their names behind second rate securities, and we all hear of too many cases where the investment end of the business is not properly separated from other ends of the business.

"So much on the merits. These comments are intended solely to lay the background for what I have to say. All of us who are interested in these institutions should, I think, hope to accomplish the investigation and development of methods and the definition of functions to the point where whatever a trust company undertakes is well done without being afraid of criticism. I am inclined to believe that criticism of the sort which Professor Dewing makes is advantageous and raises questions which we should face rather than otherwise.

"Everything I have written is written from the standpoint of thorough going interest in the success

of trust companies and a particular fondness for my old company and my old associates in it, rather than from the standpoint of an outsider. I spent a large part of my time as an officer of the Old Colony Trust Company doing my part toward making it possible for the company to develop this type of work. Personally, however, I welcome criticisms which are within the range of individual research; honestly made and fairly stated as Professor Dewing's criticisms are.

"I am sorry if I appear to differ with you on the merits of the problem, but I think our differences are more apparent than real.

"Now, on the side of education and its function, I think nothing could be more seriously opposed to the effectiveness of an institution of this sort than to have the faculty get the feeling that they could not express what they believe is fair criticism. American industry is in a position where it needs such criticism. Institutions of this kind can, it seems to me, do a very constructive piece of work in giving it. We should not be bad tempered and Professor Dewing is not bad tempered. We should not make ill considered criticisms and I know that Professor Dewing would feel that his criticisms are well considered. He is careful to limit the scope of his research and to state that his information is inadequate to do more than throw a question on the whole situation. I don't see how any one could have spent a long period of time in trust company work, no matter how much he believes in it, and no one believes in it more than I do, without feeling that this type of criticism is an asset of an important nature rather than a liability. Trust companies will, inevitably, benefit if they meet fairly and act upon such criticism and such statements rather than being disturbed by them.

"Here is a man who is, on the whole, recognized by the entire academic community in economics and business as being one of the outstanding figures or even the outstanding figure in his line. If he feels that criticisms of this nature have a fair foundation, is not that enough to make it worth while to study the basis of such criticisms and try to remove the causes of the feeling, rather than to approach it from the viewpoint that academic freedom should be so limited as to prevent such criticisms? It seems so to me. The fact that I do not agree with Professor Dewing in all his views on finance has never bothered me. The fact that in this case, when considering the investment business he has reached a broader conclusion than to me seems sound, does not disturb me, and I wish it did not disturb you, because I believe that we must, in the last analysis, come pretty close to agreeing with him. For example, if you take into account all trust companies which are doing investment business and all trust companies which are doing trust business, do you not, on the whole, reach the conclusion that the standards in these groups are lower than they ought to be in a field so important? I confess that I feel so, and that this feeling is not only one which I have now, but which I had when I was actively engaged in trust company work. Instead of a blanket indictment of Professor Dewing for doing something, it seems to me that men like you and me should devote our attention to seeing if we cannot change the conditions which lead Professor Dewing to these conclusions. It may be that, as a result of further study, we could convince him that conditions have already changed. Personally, I think they have a long way to go before they are right. In making this statement, you know that I am not biased by any prejudice against trust companies nor do I believe Professor Dewing is.

"Very truly yours,

(Signed) W. B. DONHAM,

"Dean, Harvard University, Graduate School of Business Administration."

Well, the next step in this series of episodes was a reference of correspondence to our efficient Manager, Mr. Mershon. He continued the argument with Dean Donham, giving him additional and pertinent facts, and established what seemed to be a vital point in the issue, as to whether "Academic Freedom or Academic Truth" was desired, by pointing out that we were not concerned in limiting academic freedom and granted to every man and every writer the privilege of his own opinion, but we did have a certain regard for facts which seemed to us to warrant the contention that academic truth was very much more important than academic freedom; and Professor Dewing, in making these statements of inefficiency and untrustworthiness, was not only uttering what was untrue but absolutely damaging and injurious to a very important phase of the banking business.

Mr. Mershon has written him in splendid temper, outlining those facts to him, and I do not want to take too much of your time here in detailing them, but he points out the efforts that the Trust Company Division has made for years, to raise the standards of trust company service; the splendid record that has been reported to us in returns to our questionnaires, of our companies in the handling of estates, the high yield which has been secured from their investments, the relatively and inconspicuously few losses that have ever been reported or suffered, and the vastly increased measure of protection which has been accorded by the organization in the service of the corporate fiduciary.

This particular letter, I think, might be well worth while, if your Chairman feels so, to incorporate in the proceedings of this meeting, for you all to read and study at your leisure, for it is too long and much too thorough to bear casual reading.

Mr. Mershon gives to Dean Donham a number of references which he and Professor Dewing might well

pursue, in seeking the facts, and from our own trust company literature, with which you are familiar; and then expresses, in conclusion, that if there is anything further we can do to present this case fairly and fully to them, it would be not only our pleasure but our obvious duty to do so, and we were at their disposal at any time.

Mr. Mershon has, of course, received comments and criticisms of Professor Dewing's work from many quarters, and in conclusion of that particular episode, Dean Donham wrote, expressing his pleasure at the tone and temper of Mr. Mershon's reply, and also assures him that it is their desire to pursue this subject further and to find the facts, which I hope is true.

The correspondence referred to by Mr. Sisson, follows:

"Cambridge, Mass., Dec. 22, 1926.

"My dear Mr. Mershon:

"I understand that you are collecting some facts bearing on the effectiveness of the administration of estates by trust companies as compared with individual trustees. I should be very glad to have whatever material of this sort that you are free to give me.

"Very truly yours,
(Signed) W. B. DONHAM,
"Dean, Harvard University, Graduate School of Business Administration."

"New York, January 5, 1927.

"My dear Dean Donham:

"On account of absence from the city and the holiday season, it has been quite impossible to acknowledge at an earlier date your inquiry of December 22nd. Since receiving your letter, I have discussed with Mr. Sisson, Vice-President of the Guaranty Trust Company of New York, your request and have read very carefully your letter to him under date of December 24. Mr. Sisson asked me to include in my reply, his thoughts in respect to the portions of Professor Dewing's book to which attention has been called.

"The exception taken to Professor Dewing's statement was not prompted by any desire to limit 'academic freedom,' but because it was felt that his criticism of trust companies is not supported by the facts. The primary weakness of his statement is found in his expression, 'a totally inadequate number of trusts have been studied to enable one to permit broad generalizing concerning the ability or lack of ability of the professional trustee.' He builds an argument which reflects upon all corporate fiduciaries after making 'four studies—each dealing with from four to eight trusts.' It is very unlikely that a man possessing any knowledge of trust business would try to present a picture of trust companies as a whole, after examining a few scattered trusts. We are compelled, therefore, to differ from your opinion that Professor Dewing is justified in his statement, because he 'is careful to limit the scope of his research and to state that his information is inadequate to do more than throw a question upon the whole situation.' What he does is to condemn the entire trust company profession after investigating a small number of trusts, and then without a clear explanation as to the nature of these trusts. This is obviously unfair.

"It would be very greatly appreciated if you could send me, in confidence, if necessary, the names of the particular trust companies investigated. The location of these companies may make it quite easy to give an answer as to why the results of their administration are as reported in his book. This is a matter of grave concern to all trust companies, and I can assure you it will have our immediate attention. It is certainly unfair to make such a blanket statement without giving a description of the trusts under consideration.

"For instance, were the trusts received under will or were they created during the lifetime of the donor? Were the securities received in the trust to be held regardless of market fluctuations, or was any resultant depreciation due to wrong investment by the trustee? If a living or voluntary trust, did the creator of the trust specify that certain securities should be favored as investments or did the trustee have any discretion in retaining the investments which evidently depreciated in value? Then again, when was the study made? There were certain periods during the past ten years when market conditions had declined to such an extent that it was almost certain that there would be losses if certain securities had to be sold.

"It has been the constant endeavor of the Trust Company Division of the American Bankers Association to raise the standard of fiduciary work in all of its branches. It has been particularly active during the past ten years. The investigations of our Committee on Research, which cover the country as a whole, have enabled us to reach very different conclusions from those of Professor Dewing. A summary of a survey by this Committee, of the official records of the Banking Departments of thirty-eight of the forty-eight states of the Union from which reports were available, sets forth, quite clearly, the safety and fidelity of trust companies as fiduciaries. (See enclosure No. 1.)

"'Income Yield from Property Managed by Trust Companies' is a summary of 325 replies to a questionnaire also compiled by our Committee on Research. It covers a study of trust companies scattered throughout each of the forty-eight states and one territory. It shows that, after deducting expenses of administration fees, trust companies are earning and paying beneficiaries an income which will compare favorably with the gross interest yield on high-grade investments. (See enclosure No. 2.)

"Your statement that 'corporate trustees too frequently fail to approach the problems of investment and trust departments with the same competent attention and organization that similar problems get in their older departments' is also contradicted by the facts. Through the national and regional meetings conducted by the Trust Company Division of the American Bankers Association, during the past eight years, trust officials in large and small groups are studying ways and means of rendering the highest standard of service and of maintaining the highest ethics in conducting their business.

"This Division of the Association has been active in assisting in the formation of thirty-four local corporate fiduciary associations throughout the United States, through which local problems and service are discussed intensively. (See enclosure No. 2-A.)

"In order that you may visualize the manner in which our national organization is functioning and the way in which problems confronting a corporate fiduciary are attacked, I enclose copy of an address delivered by Mr. Sisson, upon the completion of his term of office as President of the Trust Company Division, at Los Angeles, last October. (See enclosure No. 3.)

"Referring to your wish 'that some of the large companies would be a little more careful not to place their names behind second-rate securities' permit me to assure you that corporate fiduciaries may frequently be embarrassed by securities falling below the standard after such securities have been issued. It would be a wonderful contribution to the financial institutions of America, if someone could evolve a method whereby the safety of loans could be foreseen. In the matter of extending credit, all factors may be taken into consideration by a loaning institution at the time the loan is made; the character of the borrowers may be deemed of the highest; their ability to manage the business may be unquestioned; the invested capital in the enterprise may be up to, or even beyond the ordinary business requirements; the additional collateral accompanying the loan or other assurance of payment may be entirely satisfactory at the time that the loan is made. Some unforeseen event such as a defalcation; subsequent mismanagement or other feature may enter into the situation and the banker find himself with a piece of paper in his portfolio upon which he may eventually collect 50%, 20% or even nothing. Just so, in acting as trustee under a bond issue, all legal or other requirements may measure up to the highest standards, but between the time that the business is accepted and the security marketed, a decided change may take place. You must know that many loans of banking funds, in the past, have been made upon false representations. It is also possible to have issued bonds with the name of a corporate fiduciary affixed thereto as trustee, without knowing that all parties or all phases of the transaction could not be trusted. This portion of the business of trust companies has had, and is having, the very best possible attention.

"Referring to the small local trust company giving investment advice, you must surely admit that it is a wise practice for the citizens of a community to go to the best source of information for financial advice, namely, the bank or trust company. Millions of dollars have been lost by the citizens of this country through the purchase of so-called securities, where the 'blue-sky' is the limit. Too many lives and homes have been saddened and wrecked through the placing of savings and legacies in such enterprises. In ninety-nine cases out of every hundred it is obviously better for the Widow Jones to seek and secure the advice of her local banker upon matters financial than to accept the word of a salesman who visits the locality for a temporary period, but for a very definite object.

"As illustrating the manner in which trust investment problems are being discussed at our conferences, we invite your attention to

1. Trust Investments, by H. F. Wilson, Jr., on page 27 of the Proceedings of the Seventh Mid-Winter Trust Conference, February 1926, in which article will be noted a system and organization for the periodical review of securities. (Enclosure No. 4.)

2. Trust Funds, Their Care and Investment, by W. J. Stevenson, page 49 of the Proceedings of the Mid-Continent Fiduciary Conference, December 1925, and to Practical Suggestions to Facilitate Management of Estates in Production of Income, by John C. Mechem, on page 15 of the same proceedings. (Enclosure No. 5.)

3. Holding Non-legal Investments in Court Trusts, by Donald Myrick, page 24 of the Proceedings of the Fourth Regional Trust Conference in Los Angeles, September 1926. (Enclosure No. 6.)

"Without encroaching further upon your time in this letter, I must reiterate that it is unfair and unjust to the cause to which trust men are devoting their lives to place in a current book misleading examples even though 'the early records of the trust companies—were not very satisfactory' as you believed them to be.

"It is our hope, therefore, that you and your associates can suggest some way whereby we can minimize the damage of the statements already made, as well as assure ourselves that they will not be repeated. For your information, I am hearing from different parts of the country in regard to the portion of Professor Dewing's book which is the subject of this correspondence. I fear there will be many undesirable reactions over a period of several months, so that I shall doubly appreciate your

early suggestions whereby these criticisms can be effectively met.

"Very truly yours,

(Signed) LEROY A. MERSHON,

"Secretary, Trust Company Division, American Bankers Association."

Professor Dewing's first point, that it is bad business for a banking institution to add an investment department, seems to me to be so utterly out of reason and beside the fact as hardly to warrant discussion. In my youthful enthusiasm and innocence, I have gone up and down the breadth of the land for years, and urged my banking friends, particularly in the smaller communities, to add a bond department to their organization, and be prepared to give investment advice and service to their clients, not only as a reasonable business service in which they might hope to realize profit, but also as a high degree of public service, looking forward to that day when we can keep our bank depositors and investing public from buying the cats and dogs and wild cat securities which are offered on all sides, by making sound investments available to them from their own banks. I have believed that is a public service and I still believe it, and I cannot picture the mind of a man writing as a financial authority, who does not see in that a real service which our smaller trust companies are rendering their own clients. I feel that it is not only, as I say, good business but public service of a character that should command the praise and support of academic writers and text book authors, even more than that of the business community which is directly served, for we are led to believe that all our ideals find reflection in academic circles, if not inspiration there.

Professor Dewing's next question, which deals with the service of trust companies in handling estates, of course, bears lengthy discussion. Obviously, he has made a very inadequate study of this field of service. As he says, himself, he took only a few scattered cases, prior to 1900, and then says that, theoretically, there was very little corporate fiduciary service prior to that time; overlooking the fact that there were, in New York, several trust companies whose services in that field run back as far as 1840, and whose total aggregate of personal trusts in 1900 would have run into hundreds of millions of dollars. He did not take the pains to advise himself concerning the facts as he might easily have done, if he had inquired of the Farmers' Loan and Trust and of the United States Trust and the New York Life Insurance Trust, and a number of other companies which could have given him a real background from which he could draw conclusions.

Now, that presents the case which seems to me to be quite an important one to our trust companies. Mr. Mershon, in sending out some of this correspondence to the members of the Executive Committee and officers, received back a number of letters, and it is fair to say that some of our leading members feel that this discussion ought not to be given publicity, that it is rather unimportant, and we should not get agitated about it. I cannot agree in my own view with that conclusion, because I feel when a great university authorizes the publication of a text book dealing with this important problem, apparently giving sanction to such utterances, which will be widely read and widely accepted by people who could not know any better, that it strikes a blow at the business of trust companies and the character of their service, which warrants our defense.

I hope that, in the course of this discussion, we will find it possible to get before Professor Dewing and Dean Donham important facts in relation to our service, to the returns to our beneficiaries, and the manner in which we have handled their estates, which will convince them that their conclusions are not based on facts, and then we will have the opportunity of seeing whether Professor Dewing belongs to the Lloyd George class or not. If so, at any rate, we will have the satisfaction of presenting our side of the case.

Gentlemen, I think that completes all I have to say about it. This issue between "Academic Freedom and Academic Truth" has been waged for something like six thousand years, and you and I are not going to solve it here today, but I do believe our own personal dignity and our loyalty to the institutions we represent warrants us as trust company officers to resent such inferences as have been drawn here, and to do our best to accomplish two things: First of all, to be sure that in our own companies and in the service which we ourselves render, that those high standards which we proclaim are attained within reason; and second, that we gather together the basis of facts upon which we can disprove any contrary statement.

First—to sum it up—let us be sure we are right, and then go ahead. And I hope that will be the feeling of the Trust Company Division in its further pursuit of this matter, and that we may be able not only to check undesirable publicity but to get before the intelligent business community and the reading public positively helpful and constructive publicity about corporate fiduciary service and the manner in which it is being handled today by our institutions as a whole. I bring these facts before you in this rather casual and superficial way, for you to make use of as you think best in your own communities and to take unto yourself the burden of responsibility which such charges always bring, of seeing to it that your own house is in order.

CHAIRMAN MCLUCAS: I am sure academic truth became quite interesting as that presentation proceeded. We will turn to the next subject, "Preparing the Trust Prospect to Say, 'I Will'," to be presented by Mr. Charles H. Moore, Vice-President of the Union Trust Company, Rochester, N. Y.

Preparing the Trust Prospect to Say "I Will"

By CHARLES H. MOORE

Vice-President, Union Trust Company, Rochester, N. Y.

MR. CHAIRMAN, Ladies and Gentlemen:

This little talk that I am about to give, is addressed, primarily to the average sized trust company and is to be illustrated by some lantern slides.

When a person says, "I will," either he vigorously directs or else he falteringly consents. By the mere inflection of his voice, or by the dominance or weakness of his accompanying gesture, anyone can discern whether he is actually assertive, or whether he passively condescends. Now, if you have assumed, in reading the topic of this talk, that I have undertaken to pose as an advocate of so-called "high pressure, strong-arm methods" of obtaining "dotted line results," you have greatly misinterpreted my motive. Quite on the contrary, our sole object should be to help the trust prospect fulfill his plan, provided his plan is conceived understandingly.

If a trust official is honest in purpose and ethical in all his dealings, he can have no other purpose in interviewing the client, beyond attempting to have the latter act on his own initiative, but not, however, until the client is fairly informed as to what he may do. Nor need the trust official, in so handling the situation, unethically invade the precincts of the lawyer.

How Approach Our Task?

UNDOUBTEDLY, there are practical methods of conserving the time of the trust officer, to obviate the necessity of countless interviews before he becomes informed of the true desires of the trust prospect. Hence, if, by your suggestions and mine at this meeting, we can devise ways of eliminating some of the wastage of time and talk needlessly dedicated to the average trust interview, we shall have contributed something genuinely worth while and done something constructive.

Two principal items, as I analyze the situation, confront us. First, we must provide the trust prospect with the simple but outstanding facts that will urge him to do his own thinking. Second, we must, in some way, find a mutual point of contact that can be developed into a bond of confidence between this prospect and the bank.

Will it not be better for us to consider our trust development from the viewpoint not of the great metropolitan institution on the one hand, nor on the other, of the little crossroads bank, manned by a single official or two, but as starting with the personnel and equipment of what may be fairly typical of the average trust department in the average-sized community, perhaps represented by the rank and file of the institutions whose delegates are here today.

Size of Estates Sought

MAY we not assume that we already have learned the fallacy of concentrating our principal endeavors in attempting to corral only the great estates in our several communities. Likewise, shall we admit that we realize we cannot hope to survive by handling only very small estates. Hence, sensibly, I think we begin to consider our bank as a sort of semi-public financial institution, catering to the business of the average estate, represented by the families of moderate means in our communities. Herein lies volume.

In serving this average family, we shall acquire, of course, some estates very much above the average, estates of the rich; others, very much below the average, estates of meager inventory. But the work and profits on both will offset each other.

Careful Analysis of Prospects

IF we are wise, we shall ascertain with some definiteness, before we start out, just who will be considered our trust prospects. Careful analysis and deliberately taking the time to make it, will save much in an aftermath of expense and waste. Just how we shall list or card or otherwise schedule these names, is a matter of detail, but before setting out, we shall, of course, determine more or less accurately whom we may or may not cultivate profitably.

Now, how are we to get across the message—the clear statement of facts that is going to inform and get each of these individuals not only to think estate-wise, but eventually to take action that will operate to protect his estate interests?

Ultimately, we realize that our service, to be effective and satisfactory to both prospect and bank, will require one or more interviews with a trust department official. With real conscientiousness, we do not seek to deny any of these trust prospects any constructive help that we can provide fairly; yet if there is a way that is more direct and resultful, one both effective and efficient, why not employ it?

Corrective and Constructive Features

I THINK it is fair to say that, in developing the average trust contact, there are two features to be met: First, the corrective, that is to say, overcoming the average prejudice which has been produced by the story book, the stage, the screen, and by outright superstition,

whereby there has arisen a widespread popular misconception of the topic of wills and estates. Second, the constructive, by the outlining of modern estate service and the application of such service to the needs of the average individual for his family's future financial protection.

Would I be at all exaggerating were I to launch the statement that if the trust official undertakes to devote the time required to discuss deliberately the topic of wills and estates with the average layman, he can fairly spend from one to three hours with the prospect in an unhurried interview? Is this justified, as a modern procedure? Obviously, no.

Publicity Time Saver for Trust Officer

HOW then can we effect economies in point of time for the trust official and still wipe out the prejudices and build on the facts with which the trust prospect should be fairly informed? Well, perhaps, by the application of some sane and sensible methods of publicity.

If the fallacious notions about wills and estates can be corrected and the outstanding truths can be told by the trust officer, by word of mouth, cannot these same ideas be conveyed no less convincingly—at least, in a preliminary way—in type? So that, when the prospect advances to the stage where he comes to the trust officer for an interview, many of the requisite details are already explained and understood, and the prospect is, indeed, prepared to give some well-considered directions regarding the future management of his estate, although, of course, he may still require something more in the way of specific information to adapt his plans to feasible methods of procedure. I think we all admit this may effectively be done, in fact probably many of us now are doing this very thing.

Simplicity Essential

DO not many of us, however, fall into the error of discussing the technical elements rather than the simple facts? Does our informative literature tend to confuse, rather than simplify, the plain facts? Has our appeal been primarily the setting up of some terrifying bogies? Have we indeed raised a scare hue-and-cry that drives our quarry further into the brambles? If so, this attitude begets us not the spirit of confidence, but actually produces added fears, timidity and more reticence. Therefore, do you not see, if our approach is intended to inspire confidence, our attitude must be that of a champion fighting against any of the numerous enemies that operate to deplete estates?

Probably your experience shows you that if we deliberately discuss the simple facts about estates and trusts, none is more enthusiastic to apply our constructive suggestions than these very trust prospects who, in the main, have misunderstood or misconceived the real facts about applying caution and methods of conservation for the management of family funds.

How to Interest Prospects

AS a further contribution for your consideration, I want to offer some illustrations of the points I have, in a preliminary way, been discussing. What facts, if simply told, will interest and inform the trust prospect and likewise urge him to begin doing some constructive thinking, estate-wise, on his own account? Perhaps such questions and points as I shall now attempt to stress will stimulate him to view the subject of wills and estates introspectively.

Here are some folders which will give you an idea of some of the different viewpoints that we attempted to cover, folders of no particular type of artistic design but primarily prepared to answer some outstanding question that might come to the mind of the average prospect, and which we sent out, interspersed with letters.

Likewise, lest we fall into a monotony of letters and folders, our supplemental series of approaches took the form of correspondence cards, somewhat similar, perhaps, to the next illustration, from which it will be seen that we are attempting to help the recipient further to visualize what is bound to happen to his own estate, if he fails to provide for its management, during the period of settlement and afterwards.

Without proper plans for administration, what will really happen:

1. If he leaves real estate.
2. If he carries life insurance.
3. If he is accumulating securities.
4. If he owns and operates a business.

Prospect Calls for Help

HE begins to realize estate hazards are numerous, and he becomes actually concerned for the future financial welfare of his family. Sooner or later, the old order of things is reversed, and you find the trust prospect rather is pressing you, the trust officer, to help him analyze and organize the affairs of his estate.

At this juncture, there has come to his hand a semi-blank form or chart, upon which he, himself, can note down the outstanding topics he wants to discuss with the trust officer. A simple chart which our bank has found more or less serviceable shows the consideration of the prospect's estate under four heads:

1. A brief statement of present estate assets and liabilities.
2. The proposed division of the estate by will.
3. The choice of an executor.
4. The administration of life insurance proceeds other than those included in the estate proper.

Finally, you find your trust prospect sitting there before you, seeking to know what practical help you can afford him. Not being solicited in his own office but having voluntarily come to yours, you find him detached, for the moment, from all the distractions of his business, able and determined to bring all his attention to bear

upon the matter in hand. Now that he has crossed the threshold of the conference room, it is up to the trust officer to concentrate every ounce of experience and energy he possesses in helping the prospect to analyze, organize and develop the more or less vague or definite plan the latter may have in mind.

The Interview

I MUST confess I feel a little reticent about standing here before you and illustrating how I go about this interview business. Indeed, mine may not be the right way, and if it is not, the quicker I learn from you my errors, the better.

My first attempt is to win the unqualified confidence of the prospect, man or woman. This, I suppose, is done by frank and absolutely fearless statements of fact. In the layman's language, a will appears to be a sort of a private law, whereby an individual is allowed to direct how his earthly possessions shall be distributed at his death. Being his will, it should be his genuine wish, and it should be the lawyer of his choice who should draft it, and the executor of his wish who should fulfill its terms.

The principal items to be determined in making a will are: First, the personnel of the beneficiaries he desires to name, and, of course, contingent beneficiaries. In this connection, I shall have reference to this enlargement of a printed desk memorandum pad, which I have found convenient for hastily jotting down outstanding notations for later reference. While I chat, I am making notes of the desires he expresses. I shall confess that, to anyone else, those are probably somewhat as illegible as stenographic characters. But, at least, when we finish, I have gained a clear conception of the family protection the prospect has in his mind.

Dividing the Estate Proportionately

THE next consideration is the desired division of the estate. May we not, as trust officers, advocate that this might be more equitably accomplished as to the substantial part of the estate, by proportions, rather than by specific gifts, which, if added, would total the entire present estate.

This leads me to call your attention to the next illustration, a series of circles. The middle circle represents the approximate value of the present estate which, we will say, is $20,000. But there is no guarantee that this estate will remain fixed and unchangeable as to that amount until the death of the testator. Hence, if today, with his present estate in mind, he is inclined to make four specific bequests, one of $10,000 to "A," the second of $5,000 to "B," the third of $3,000 to "C," and the fourth of $2,000 to "D," how will B, C, and D fare, if his estate, between now and the time of his death, shall be reduced through some misfortune to $10,000, which will provide only for the first bequest in that amount to A?

Whereas, if he divides his estate proportionately, or by percentages, leaving fifty per cent to A, twenty-five per cent to B, fifteen per cent to C, and ten per cent to D, should his estate be reduced to one-half its present size, or, indeed, increased to twice its present size, by thus dividing his estate proportionately, proportionate provision would be made for each beneficiary, and the sector or "slice of the pie" would be relatively large or small, according to the perimeter of the circle denoting his actual estate at death.

Of course, the next logical question for consideration has to do with how these proportions shall be handled, whether granted as outright gifts or whether one or more portions of the estate shall be managed and conserved for the use of the beneficiaries for a certain term, likewise, the length of the term, which doubtless is limited by your state statute against perpetuities.

Consideration of contingencies, remainders; powers of executor and discretionary powers delegated to the trustee; with lastly, the naming of these fiduciaries, substantially completes the information, when we have noted down who is the lawyer that the prospect designates as his personal counsel.

Visualizing Estate's Administration

STILL chatting with the prospect—assuming that by now you share his tentative testamentary plan—, you probably proceed to review its terms with him, to avoid any misunderstanding, having constant reference to your scratch-pad memorandum before you. But, purposely, you enlarge on it as you repeat its provisions and you find that you are helping him, indeed, *to visualize the actual administration of his estate,* with the trust prospect somewhat faded out of the picture. You are giving him a glimpse into a sort of periscope, by which he is enabled, as it were, to look beyond the horizon of his own life, while you deliberately explain how his testamentary plans are being fulfilled, showing him how the bank—under the composite judgment and advice of its directors, committees and officers, applying wisely the discretionary powers delegated—handles in a practical, economical way and, at the same time, with a human and very sympathetic interest, the family fund that he, painstakingly, has acquired—much as he, if living, would administer it.

As you proceed, any amendments required are denoted, and, by this time, you can turn to your stenographer and dictate from your scratchpad, the final and complete outline of will terms that are typed in orderly sequence for the attention of the prospect's personal attorney, who is to draft the testamentary document.

Preparation of Will Memoranda

THE first page of such an outline for a proposed will is shown as the next illustration. It may be said to be the lawyer's work sheet, briefing in logical order the items to be appropriately incorporated into the will he

is to prepare. More than likely, this will outline also will be accompanied by the draft of a proposed life insurance trust agreement between the bank and the prospect for the scrutiny of his lawyer, since in all probability he has expressed the desire that similar administrative protection shall be applied to all his funds for the family, which, of course, usually embrace his life insurance estate as well as what may be termed his "general property" estate. Hence, his schedules of directions—by will and by trust agreement—are found customarily to be quite similar or coordinated, to fulfill his complete plan for the conservation and distribution of his accumulations, in general property, on the one hand, and by life insurance, on the other.

From a routine standpoint in this regard, you have had him deposit his life insurance policies that are to form the nucleus of his insurance trust, so that while his lawyer is drafting the proposed will and checking over the terms of the proposed trust agreement, time is available to you to obtain from the various life insurance companies the required change-of-beneficiary or assignment forms.

Completion and Delivery of Documents

THUS you find, at the next and final conference, you are prepared to close this client's matters by the execution and delivery of the various documents involved. Probably this includes the issuance of the receipt acknowledging the deposit of the will with the bank for safekeeping, in the envelope you provide, which he personally seals with the endorsement of his signature across its flap, carrying directions for its delivery. I am assuming that the average bank in the average size community maintains a free-will-filing-service, for the people of its community, and accepts sealed envelopes subject to the call of the depositor during his lifetime and for delivery directly to the proper surrogate, in case of death, upon notification of the personal attorney.

Now, in conclusion, I believe all of us realize, under whatever method we may be operating, we shall have done a poor job indeed, if, in the final analysis, because of lack of confidence, undue haste, misconception or misunderstanding of ideas, we have yielded the trust prospect a plan for the administration of his funds and estate, that for any reason is unsatisfactory to him.

On the other hand, if we have, by sincere and practiced service, earned his unqualified confidence in our institution and its methods, if he understands and is thoroughly satisfied that the plan which he has adopted as his plan, is the right one for his estate, and will, indeed, work as he wants it to work, then barring some very radical change in his life's relationships, this, his plan, will not be spasmodically or periodically revoked, but will stand. Moreover, you will find no more enthusiastic advocate of trust service—for what he has learned he probably will repeat—which may work as an influence among his business and social contacts, that will direct others to you.

We trust officials occasionally are given opportunities to address groups or gatherings on the topic of wills, estates and the administration of life insurance proceeds, opportunities that should not, of course, be shirked. If our informative story is couched in friendly, non-technical language and our subject is treated, not on the narrow, selfish plane, depicting what our particular trust company is doing, but about the big, broad-minded, splendid service all trust companies are doing, in administering family funds, and in simple terms and by illustrations of very human, little questions that are solved not arbitrarily but most sympathetically, we tell our straightforward, sincere story, we shall join in cutting down some of the preliminary educational work that otherwise may have to be gone into later by some other trust official to overcome popular prejudices and misunderstandings.

. . . Judge Hervey assumed the Chair. . . .

CHAIRMAN HERVEY: The next subject, "Corporate Fiduciaries the Natural Allies of Life Insurance Companies," will be presented by Mr. Winslow Russell, Vice-President of the Phoenix Mutual Life Insurance Company, of Hartford, Connecticut. Mr. Russell.

Corporate Fiduciaries the Natural Allies of Life Insurance Companies

By WINSLOW RUSSELL

Vice-President, Phoenix Mutual Life Insurance Company, Hartford, Conn.

MR. CHAIRMAN, Ladies and Gentlemen:

It seems strange that the year 1927 should find us discussing life insurance trusts almost as a new means of conserving estates of far-seeing men and women. In trying to analyze the reason for this, one will soon find some very simple facts which seem to have been overlooked. First, life insurance men have been trained as creators and not conservators; second, the public has had minimum information as to the duties of a trustee. Many losses which have occurred in the past are now to be conserved by bringing together two natural allies.

Almost $1,000,000 a day was paid, last year, by the

life insurance companies of this country, in lump sums, to beneficiaries of this country, most of whom were untrained in handling money. About 10% of the amount of life insurance paid was conserved through non-discretionary trusts created through the insurance and the life insurance company. It is quite likely that a considerable part of the $300,000,000 paid has already been misinvested.

Is it not a large part of the responsibility of trust officials as well as life insurance executives to embrace this great national service opportunity, and, together, render invaluable aid to thousands of people who do not yet understand our joint mission? Should we not counsel future beneficiaries through every possible channel of information, as to just what our program of conservation means to them?

Trust company and national bank officials have seen the benefits of trust service through the conservation supplied by life insurance trusts very much earlier than life insurance executives have. We, in the life insurance business, wish to express our gratitude for the advanced position taken by trust companies and national banks, as shown so effectively through their advertising of life insurance.

The Benefits of Broader Advertising

SOME of us believe that, through a period of very much broadened advertising, we shall be able to bring about a clearer understanding on the part of those who will be most benefited by the extension of the insurance trust idea. Trust companies, banks and life insurance companies will some day see the very great benefit to be derived for their clients as well as their institutions, through the advertising columns of the daily press and periodicals, and will jointly tell fascinating stories to the public. Untold markets in the tangible field have been created through newspaper advertising and almost untouched fields may be created in life insurance trusts by a similar process.

The accumulated assets of life insurance companies has now reached the imposing sum of $12,000,000,000, or 3.6% of our total wealth, but a still more impressive fact is that, since 1918, while our material wealth has increased only 8%, life insurance accumulations are now twenty-eight times as great. The yearly increase of assets has been at the rate of more than $1,000,000,000 in the last five years, the increase has been 62%.

These are vast totals, but when it is remembered that, in 1926, there was in force about $1,000 of fire insurance for each man, woman and child in the United States, and only about $660 in life insurance for each person, the scope of our joint opportunity opens up in full, for the time will come when the people of America will not put a higher dollar value on their goods and chattels than they do on their precious lives.

When men and women may be led to the trust officer of their bank or trust company through a simple human interest story told by life insurance men, through advertising; and when, in a similar way, the thinking business man may be led to a life insurance counselor who will both create and conserve an estate, then the alliance now in the making, of banks, trust companies, and life insurance companies, will become a wholesome triple alliance of mutual service in the community, the benefits of which cannot be calculated.

We, in the life insurance business, have been very much interested and a good deal startled, as we have sought, first, to find within our own organizations any advertising which has been done for the conservation of estates through bank and trust company cooperation, but we have easily found by reversing it, that you in your banks and trust companies have done much in advertising for the life insurance business, and we are very grateful for it.

Examples of Trust Advertising

I HAVE had a few slides made of different institutions. Some of you, I am sure, have seen most of them, I know a few of them have not been seen, for I put them on to the slides, myself, and I will show them very quickly, and then very briefly describe an advertisement by our company along similar lines, which is soon going to appear.

. . . The following advertisements were then shown:

Fidelity Union Trust Co., Newark, N. J. "What is Your Opinion of Life Insurance?," Many of you have seen it; Union Trust Company, Detroit, Mich., (5 slides); American National Bank of Chattanooga; Wachovia Bank and Trust Company, Winston-Salem, North Carolina: one they copied from an American magazine ad which we used on trusts; The Exchange Trust Company of Boston: You will see that all these ads are entirely around life insurance. The banks and trust companies are investing a lot more money in advertising life insurance than life insurance companies are spending in advertising the trust business.

This is one of the Central National Bank of Cleveland, in the "Cleveland Plaindealer," "The Enviable Mission," a straight life insurance ad. Next, the Old Colony Trust Company, of Boston. You will see here the very wide spread of this advertising, all about life insurance. Here is one of the Grand Rapids Trust Company. They were building a new building and they put this ad across the whole front of the sidewalk, on a great board, painted there, so that everyone who passed by could scarcely help reading it:

> "Before removal of this obstruction, which we are pleased to announce will be soon, we wish to submit for your consideration twelve reasons why we recommend life insurance.
>
> 1. It is an enemy of poverty.
> 2. It can help educate your children.
> 3. It is a sure way of replacing earning power.

4. It can be made to serve your family without delay.
5. It is an investment in which you take no risk.
6. It creates an estate tomorrow, if need be.
7. It can be purchased to meet every man's needs.
8. It is an instalment purchase with par when needed most.
9. It now forms a large portion of estates left.
10. It pays over $400,000,000 annually on death claims.
11. It has continuous protection and increasing cash value.
12. It gives the insured confidence and peace of mind."

I wish it were possible to show you, today, a piece of copy which life insurance companies, together and even individually, had published in the interest of the thing which I am talking about. I do not know when this will come. I do know there is an investigation being made of institutional advertising in life insurance. How long it will be before life insurance companies together will do the job that I think is a wide open opportunity for us, I do not know. For the present, therefore, I shall have to show you an advertisement of one company, which happens to be my own, and I thought, perhaps, you would be interested in seeing a campaign which we are going to put on, and we have a bit of advantage over the local bank or trust company, in that we can get a national spread with a national sales organization. This advertising is going to be run and I will tell you in what way. This is:

Phoenix Mutual Advertisement

"MAKE your life insurance do what you mean it to do.

"You wouldn't give your wife a check for $10,000 or $20,000 and say to her, 'Here's a check. It's all I have. Invest it as you please or as anyone suggests, but don't ask for my advice.'

"Yet you are doing that very thing if you have made your life insurance payable to her in a lump sum.

"It is not our purpose to point out the unfortunate results that may follow, but rather to remind you that there are ways for you to *make sure* your life insurance will do what you mean it to do.

"In fact, there are two ways, each of which has its own advantages. Yet neither should be selected until you have consulted a trained counselor and received the benefit of his experience and advice.

"Suppose, for example, you want to have some of your life insurance paid in cash to take care of the immediate needs of your family and the rest of it paid as a monthly income to your wife as long as she lives.

"In that event your counselor, whether he is a trained representative of the Phoenix Mutual or the trust officer of a reliable bank or trust company, will show you how your plan may best be carried out through the income settlement privileges of your policies.

"But suppose a regular guaranteed monthly income will not fully meet your requirements. Perhaps some member of your family is not in good health and may need extra money from time to time. In other words, your family's needs are such that money must be made available in emergencies—and at someone's discretion.

"In that event your counselor will advise you to appoint a reliable trust company or bank to act as trustee of your life insurance as well as any other property you may leave. And you can instruct the trustee to use his discretion in emergencies so that the plan will be flexible enough to meet sudden and unexpected calls for more money.

"Whichever method is employed, your wife and family will be relieved of many worries. And the responsibility for the investment of your life insurance will be shifted to a strong financial institution having long years of experience and investment facilities beyond that of any individual.

"In a matter of such importance, seek the advice of men of training, character and ability. Talk today with your trust officer. Or write to us. The service will not place you under any obligation and it is far too important to be put off another day. Clip the coupon and mail it now."

The coupon says:

"Please ask one of your counselors to call on me at the address and explain the life insurance trust. I am not to be obligated by this request in any way.

"Please send me a copy of your booklet, 'How to Get the Things You Want,' giving many interesting facts about life insurance and its benefits under the Phoenix Mutual Plan."

This advertisement is to be run in the "American Bankers Association Journal," in March and in September; the "Magazine of Wall Street," in July; "Nation's Business," in August; "New York Times," Sunday Magazine Section, on the 17th of July, and in "Forbes' Magazine," on the 15th of September.

We hope that insurance trust building will be a mutual enterprise that will be beneficial chiefly to those who may be interested in conserving their estates.

It seems to me that both of our jobs, seriously considered, may best be illustrated by a very beautiful story that I heard the other day. A woman in a Pullman sleeping car was seen very often during the day opening the window and throwing out of the window something from a paper bag, then closing the window and the bag and putting the bag back in her satchel. A fellow across the way watched that process for a number of times, and unable to understand, he went across and said, "Madam, I have been wondering what you are doing that for all day?" She said, "It is very simple. I will probably never come this way again, and I thought it would be

a good idea if I brought along a bag of flower seed, and I look along the roadbed until I see a place that looks as though it would be well for these flower seeds to grow in, and I throw out a few seeds, so the people who come after me may get the benefit and the fragrance of those flowers."

CHAIRMAN HERVEY: Thank you very much, Mr. Russell, for your address and for your corking good stories. We enjoy your suavity of manner, but we are particularly interested in the theme of your speech, that of "Life Insurance Trusts." We feel that is a field which was neglected entirely too long, and if the life insurance companies will cooperate to the same extent that the trust companies are trying to cooperate, I am satisfied a great deal of good will come out of it for the people generally, and incidental good to the insurance companies and the trust companies. We want to put a universal joint in insurance, and when we have done that, we certainly will be able to mesh the gears.

Gentlemen and Ladies, the next and last paper for the afternoon is an address on, "Extending Trust Business by the Printed and Spoken Word," by Mr. Leopold A. Chambliss, Assistant Secretary and Treasury, Fidelity Union Trust Company, of Newark. Mr. Chambliss.

Extending Trust Business by the Printed and Spoken Word

By LEOPOLD A. CHAMBLISS

Assistant Secretary and Treasurer, Fidelity Union Trust Company, Newark, N. J.

MR. CHAIRMAN, Ladies and Gentlemen: Some years ago, Mr. Edward W. Beatty, Chairman of the Board and President of the Canadian Pacific System, was asked by a reporter why certain stock of this company had fluctuated. Mr. Beatty said, "Has it fluctuated? I was not aware that it had. Young man, the officers of my company are engaged in operating a railroad, not in speculating." I feel that remark applies to the advertising and selling of trust service.

I do not like the word "advertising." Many people think that advertising implies putting something over on the public. It dates back to the patent medicine days. It seems to me that in connection with our work we should put advertising on a little higher plane.

I do not like the word "service," because it often implies giving something for nothing. But I do believe that the trust business is one business in which the men engaged in it can forget profit, for our profits come from a fixed fee and not from trading. I believe that the success of our business will depend upon maintaining our contact with the public upon a high plane of service. In our advertising we should endeavor to tell the public something it does not know and our trust solicitors should endeavor to work out an estate program for the prospect which will enable him, his family and his estate to save money when it comes time to administer the estate.

I, for one, would dislike very much ever to have the trust business degenerate to the plane where we were trying to put something over on the public.

Do Most Banks Advertise?

LAST July, the Trust Company Division sent out a questionnaire containing about eighteen questions, to trust companies and banks of the United States, asking for their experiences in various types of trust selling.

The first one of these questions is, "Do you advertise your personal trust service?" "Yes" was answered by 978 banks and trust companies out of a total of 1267 that replied.

We have classified these answers into groups according to various sections of the country, the Northeast, the Northwest, the Northcentral and the Southcentral, the Southeast and the Southwest. We find from an analysis of the replies that those companies answering "yes" are very evenly divided over the entire United States. In other words, the same ratio holds in practically all six sections of the country. There has been a good deal said from this platform as to whether or not trust companies should advertise. The answer to this seems to be conclusively that most banks do advertise.

I am sorry the questionnaire did not go farther into the following questions: How long has your trust department been established? How long have you been advertising trust service? I believe if we charted the probable answers to these questions we should find that the growth of the trust business in each of the institutions would follow very closely the line charting the money spent in advertising.

Certainly, we can say with positiveness that the outstanding trust institutions of today are those which were pioneers in advertising. Go back through your experience; the men who first joined this Division and first became leaders in trust company work and who were pioneers in advertising, are today at the head of the greatest trust institutions. It seems to me this fact is most convincing.

Local Publications

THE next question asked has to do with through what medium one should advertise: "Do you advertise in local newspapers?" "Yes," 929; "No," 338. One of my hobbies is newspaper advertising. I do not believe you can be properly represented in your community without advertising in your local paper. This gives you a certain prestige which you cannot neglect. It also gives you standing with the newspapers which is very important.

In this connection I want to make a plea for the good looks of your advertisement. Make it represent your institution. After all, the public gains its impression of your bank more from the way your advertisement looks than from what it says, as it is not always read. I think it is very disappointing to see a fine looking bank, then pick up a newspaper and see a badly prepared advertisement for that bank. People do judge you by your looks and they also judge your bank by the way your advertising looks. The question of typography is a vastly important one and I believe the average bank is overlooking it.

I shall tell you how we get out our newspaper advertisements at the Fidelity Union: We write them, take them to a local printer, telling him how the advertisements should look; he sets them in type, locking the type in chases then we take the chases to an electrotype concern and have plates made. We do not use mats. Do not let the local newspaper set your advertisements, or they will look like every other one in the paper. If you have to use an advertising agency merely to solve this problem, it is worth while.

The next question: "Do you use local magazines?" "Yes," 106; "No," 1161. We made a little study of where these 106 companies that use local magazines are located and found them to be mostly in the northeastern and northcentral sections. In densely populated communities, for example in the northeastern section, such local magazines as the "New Yorker" and, in New Jersey, "Charm" have large circulations and would be good mediums for their respective sections. If you are in a community that has a good local magazine, it seems to me, you should use it. However, you know your own communities and who are reading your local magazines, and it is a matter of judgment in each case.

I want to say a word against programs, high school papers and charitable publications. I have been engaged in three campaigns against such advertising. At the Fidelity Union we cut them all out and saved $6,000 in our appropriation and our deposits have not decreased. If a man said to you, "I have a checking account and want you to pay me three per cent interest," you would not do it. If he says, "I have an account and want some advertising, don't say "yes". It is poor business and poor advertising to do so. If you stop it you will find that your people will stay with you. Talk to them honestly about it.

Outdoor Advertising

THE next question is on a subject that again is a hobby of mine, "Do you use bill boards?". 82 say "yes"; 1,185 say "No". Again you will find that the answers are scattered throughout the United States in the six sections. By bill boards I do not mean painted fences nor whitewashed tree stumps, but dignified outdoor advertising. In analyzing outdoor advertising it must be divided into bill posters and painted boards; a painted board being one located on a prominent corner or road, remaining there all year. Poster locations, like those advertising Camel's Cigarettes, are bought by the month. You select your location, make up your design and then hire a lithographer to make the quantity of posters needed.

There are objections to both forms of outdoor advertising. This particular form of advertising must develop very greatly before it will be wholly satisfactory for banks. The difficulty with the painted board is that your local company will give you an atrocious design in a thousand different colors. It may attract your attention but does not represent the dignity of your institution. The trouble with the poster is that you cannot get a first class lithographer to print the designs on a small run such as you must use and the men who will print them for you must be watched.

National Magazines

THE next question is: "Do you use magazines of national circulation?" 4 say "Yes"; 1,263, "No". I was very much interested in the fact that there were four bankers in the United States who admitted to using these magazines and I was further interested to find that these bankers were scattered in four different sections of the country. It seems to me that advertising in magazines of national circulation in most cases is a waste of money. In using them, you buy a lot of waste circulation which is of no value except, perhaps, for two reasons: You may find a certain national magazine has a large circulation in your town, such as the Quality Group has in New York City or, as the Old Colony Trust Company did, you might want to advertise in one for a year, for the purpose of establishing prestige for your company. This is sometimes an advisable thing to do, both from the standpoint of the public and the effect it will have upon yourselves and your stockholders.

Otherwise, the national magazine is something that can well be left to the Trust Company Division. I have had the feeling for some time past that the Trust Company Division should not have given up its joint campaign, because advertisements in national magazines create prestige in the various communities that cannot be obtained through local papers or bill boards. The fact that the idea is presented in a national magazine makes it seem true to a lot of people. If, through joint advertising by this Division, the trust idea can be put over in

America, it seems to me that much of value will be accomplished.

Letters, Booklets and Folders

Question: "Do you use a series of booklets and folders mailed to a selected list?" "Yes," 706; "No," 561. I was very much interested in these answers and surprised there were only 706 out of 1,267 who used printed letters and folders while there were 929 who used newspapers. I was under the impression that the average bank used folders in preference to newspapers, but here are the facts.

"Do you use letters addressed to a selected list?" "Yes," 663; "No," 604. Again the answers are pretty generally divided. I want to mention some theories I have had about booklets and folders as against letters. I remember a very heated conference that I attended once where some of us were trying to run a campaign for one of the uptown offices. The trust officer of the uptown office came to our office and, in the midst of a discussion dramatically drew out a bundle containing about fifty unopened folders and printed letters, saying, "This is the morning's mail of an estate we are administering." That is an argument against folders. Letters will have a better chance of being read than folders.

Printed vs. Typewritten Letters

TYPEWRITTEN letters and folders are very different things and should be used for different purposes. When you first began to remember, you learned to take in new ideas through the printed page. The first text books you used in school were printed text books; as you went through college you used printed text books; and until you became business men and studied contracts and legal documents, every new idea you took in came through a printed page.

A new idea presented to a prospect should come through a printed page and not through a typewritten letter. A man is accustomed to thinking that four pages of type mean so many ideas, but a four page letter may contain any number of new ideas. One principle for letters is that they should not be too long. Another one is that a personal letter should never be written to a man you do not know. I consider it an insult to receive a personal letter from a bank that does not know me.

This seems to limit the use of typewritten letters to two or three classes of people and it means, in choosing between booklets, folders and letters, that you must first decide what you want the mailing to accomplish. If you want to get over a new idea you are confined to the use of printed and not typewritten letters. If you use personal solicitors, the personal letter becomes of little value except as a letter of introduction. I believe the letter sent out in serial form is unnecessary if you have personal solicitors. In that case the proper medium is the printed folder.

Mediums Compared

I WANT to compare the various mediums we have discussed thus far. The questionnaire presented these mediums in the following order: local papers, local magazines, bill boards, national magazines, booklets and folders, and letters. This question has been often put to me: "Our institution is a small bank located in the country. How shall we run our campaign?" I should not start out by determining the amount to be spent. I should put down a list of what I wanted to do; figure the cost; then drop off the things I could not afford to do.

I have regrouped the mediums named above in the order I think they should be used, putting booklets and folders first; the distrbution of them can be directed without waste circulation. For instance, you know how many people in your community have estates that you would like to handle. List these names and send them booklets and folders about your trust department.

The next medium is local papers, without which I do not think you can put on a well-rounded trust campaign though it is not necessary to use the papers constantly, as the department stores do. Then come local magazines, bill boards, letters and, lastly, national magazines. This grouping may be criticized by some people but, personally, I think it is the order in which to work out a well-rounded campaign. In anticipation of such criticisms, I might say, that the majority of banks do not agree with me as more people use local papers than booklets and folders, according to this questionnaire.

Mailing List

TO the question: "How large is your mailing list?" Answers were as follows:

269	said from	100	to	500
228	said from	1,000	to	5,000
183	said from	500	to	1,000
24	said from	5,000	to	10,000
5	said from	10,000	to	20,000
2	said from	25,000	to	35,000

I am proud of the fact that my bank is in the 25,000 to 35,000 group. But the size of the list depends entirely upon the size of the community. I wish the question had been divided into whether folders or letters are sent. If you are sending out personal letters, I think you are safe in having a small mailing list. For folders, you should have as large a list as possible.

A word about compiling this list: I have been in advertising departments that spent months fussing over the names. They spent more time over the names than on the material sent out. The result was that very little was sent out. If possible, buy a mailing list, based upon real estate values, low automobile numbers or income tax returns. Use this list for a year then buy another one; catch the duplications and changes of address and so on, from year to year. Most of the big mail order houses follow this system. There is a tremendous

waste in mail advertising, therefore, do not spend your time trying to eliminate this waste. You will make mistakes but the point is to keep sending something out.

The next question is, "How often do you circularize it?" answered as follows:

335 said—every month
129 said—irregularly
45 said—four times a year
35 said—twice a year
30 said—six times a year
21 said—ten times a year
18 said—once a year
12 said—twice a month
7 said—eight times a year
2 said—every ten days
1 said—every six weeks

635

The only ones I disagree with are the 18, once a year. But even this may be correct. For instance, they may use only a lawyer list and send a desk pad every year. The only generalization that can be made is that you do not want to make a nuisance of yourself nor do you want to be forgotten. If you have an advertising man on the job he may be able to do a better job by feeling the pulse of the community and making up his mind when to send out a folder. There are certain months you can discontinue advertising, for instance, during the summer months when the people in your city go away. The problem requires the use of intelligence.

"Do you prepare your own booklets or letters or are they prepared by an advertising agency?" Out of 744 institutions answering, 408 use advertising agencies, 204 prepare their own booklets, 117 prepare their own material and 15 use the Trust Company Division's.

Trust Solicitors

WE now come to a question which interests me a great deal and one upon which we have been working very hard in Newark during the last few years: "Are trust prospects visited by trust solicitors?" 176 banks reported using solicitors, 27 reported "yes, when requested," giving a total of 203 banks using trust solicitors, scattered quite evenly throughout the United States.

I am going to waive the question of ethics or advisability in this discussion because a great deal has been said about them at other meetings. I only want to give out one thought: Do not let your experience with bank solicitors influence your opinion of trust solicitors. In Newark, we have eight men soliciting trust estates and none soliciting bank accounts. The fact is there are two hundred banks in the United States actively and successfully soliciting trust business. I cannot tell from the figures but I hope these banks are using full-time solicitors, not using only their officers to solicit when necessary.

This question of whether your officers can solicit trust business is a very mooted question. The facts are that your bank officers will not do the work. You can waste years trying but it has been proven by experience that the bank man will not solicit trust business no matter what the president or directors say. He is too busy turning down loans and certainly will not say, after turning a customer down, "Now, let us have your trust business." Besides, the human mind cannot work on more than one thing at a time. A man who is busy with bank business will not think about trust business. This business must be obtained through men who are thinking primarily about it and its problems.

The next question is, "How many trust solicitors do you use?" The total answers on this question are 142. According to these figures, 142 men represent 203 banks. This shows how inaccurate figures can be. 91 banks employ 1 solicitor; 33 employ 2; 10 employ 3, etc., and one bank employs 14. I think I know what bank that is and it is having a very successful campaign.

Obtaining Trust Solicitors

HOW do you get these men? How do you train them? These are important problems to all of you. One method of getting men is to advertise to your own bank employees that you want a solicitor and then look over the applications. If you can take your own men and switch them into the New Business Department you can save costs, as you simply transfer them from one payroll to another.

Here is another very good method: Last summer, I needed three men and called up a lot of people asking them if they knew anyone who would be interested. Within two weeks, about fifty men called on me. I do not recommend advertising in the newspaper for this purpose. I had some sad experiences in doing that. It is a good idea to write your stockholders and say that you want a trust solicitor as they can often suggest excellent men.

The men whom we take for this work must have had some business experience; they must be gentlemen and about twenty-five or twenty-six years old. They need not be college men—one of the best men I have is not a college man. In other words they must be the type that a "tough, hard-boiled" prospect will not throw out, and they must be young enough to stand the hard physical strain involved in making large numbers of calls.

Training Methods

HOW do you teach your men? We let our trust officers run a school. The security man, the real estate man and the tax man all get a shot at our solicitors. They have about two months of pretty hard schooling. They read the trust files, have a lot of estates assigned to them to work out tax returns and they are given some closed corporations on which to work out good will valuations. Their knowledge is acquired by experience and

hard work. Tell them that in six months they must have called on fifty or a hundred new men. One insurance firm starts its men at 50 Church Street, making them see everybody in that building. By the time they have been turned out of a hundred offices they are fair salesmen. If your salesman has any intelligence he will work out a lot of his problems for himself and if not, he is not worth keeping on your staff. In teaching your men to sell, insist upon their working hard. Make them see as many men as possible in a day, giving you a report on their calls. Divide this up into new calls and follow-up calls. Keep your men pursuing new people. I think a lot of new business departments sign up business that you would get anyhow. Make an analysis and insist upon your trust man getting new designations.

How do you get your leads for these men? How do you get your names for personal letters? Suppose you decide to run a campaign of personal letters! First you send to the men you know best. After all, the man who knows and likes you is the man who will name your institution; you select your good borrowers and good depositors, then send your men to see them with letters of introduction from your officers.

Titles and Salaries

"WHAT titles, if any, do your solicitors have?" 142 answered this question and I want to read some of the titles because I think this is the most difficult problem that this particular branch of the work is facing. The titles we have for these men seem to me to be very inadequate. 63 of the banks answering said their trust officers did the soliciting and 49 said their officers did it. The titles vary as follows: "solicitor," "trust representative," "manager of new business department," "member of new business department," "salesman," "special representative," "field man." There is no title in that entire group which I think is adequate. Sooner or later, we shall come to the point where it will be necessary to make our solicitors into officers. We are giving these men important work to do. They are often bucked up against men who do not like to talk to anybody but the chairman of the board or the president. We must give them proper titles. To send a man with the title of "office boy" is an insult to the prospect. On the other hand, we cannot give these men titles indiscriminately. I do not think any of us has decided upon a satisfactory name for our public relations or new business work. Perhaps, by the use of folders in which we explain the purposes of our work to the public, we can put over the idea that our men are employed to help our customers work out a plan for their estates, but it is hard to put this idea into one word.

"Are trust solicitors on a salary or commission basis, or both?" Only 64 banks answered this, 63 say "salary" and one "commission." We presume the rest are paying their men salaries. There is one bank that has nerve enough to pay a commission. I am in sympathy with this. In fact, I have been considering the advisability of a salary and a small commission to encourage the solicitor. If he comes in and says, "I have an estate which I think is worth so and so," you should accept his word; also, if you pay on a commission basis, you should not go into the question of whether the business is lasting. Salaries are a common question with us. We pay our salesmen in accordance with what we pay our senior clerks and department heads. Probably you have a fixed standard in your institution.

Inside Cooperation

"HOW do you inform officers and employees regarding trust department facilities?" Here are the answers:

92 say through informal meetings and talks
89 say through conversation
60 say through office conferences and memos
25 say through office charts and circulars
20 say through literature
18 say through monthly meetings
11 say through lectures and library
10 say through house organ
5 say through class each winter
4 say through weekly meetings
3 say through sales club
1 says through lobby meetings
1 says through officers meeting

I wager there are very few of the banks doing anything at all. Personally, I vote to do nothing. I believe there is a great deal of effort wasted by trying to educate the employees in trust business.

It is often good to have a campaign for savings accounts. You can get this type of business through employees but when it comes to a campaign for trust accounts you face difficulties. In the first place, your employees do not know many wealthy people; secondly, they know very little about the trust business and are apt to do more harm than good.

I do not believe your officers will do anything, no matter how much you educate them. It may be all right, from the standpoint of internal organization, to have your officers know your trust business but so far as developing new business, I, for one, am ready to save the time and energy that usually goes into such campaigns. I think your new business manager can be more useful if he is on the outside soliciting business, than on the inside supervising a campaign to educate the bank.

To the question, "Are employees other than regular trust solicitors recompensed for obtaining new trust business?", 30 said "yes" and 2, "during campaigns."

Only three answered the question: "On what basis are employees paid?" One bank says—leads eventuating in wills, $5 unless the estate is known to be large and unusually secure; $10, if trust is created by will and we are trustees, larger if estate is larger; living trusts, half of first year's estimated net profit—I do not know how

you get at the net profit—insurance trusts, $5 and up; agency accounts, half of first year's net profit. Another bank pays a cash bonus of $2 to $10 on estates of $5,000 and up; on living trusts, $5 up to $100,000; $50, for a voluntary trust over $100,000.

Direction of New Business Activities

THE last question is: "Under whose general direction are all of these activities maintained?" The answers are:

386 say under—officer or officers of bank
284 say under—trust officer
13 say under—trust committee and officers
12 say under—officer in charge of new business
8 say under—trust officer and publicity manager
5 say under—board of directors
4 say under—officer in charge of advertising
3 say under—manager of business extension
2 say under—advertising and business develop. dept.
2 say under—executive committee
2 say under—advertising department
1 says under—committee of three appointed yearly
1 says under—trust department
1 says under—officers and service department
1 says under—public relations dept. and committee
1 says under—officers and board of directors
1 says under—chairman of board of directors
1 says under—advertising manager

728
I think the climax of absurdity is reached in the answer, "trust department." The trouble with your new business and advertising departments is that there are too many people running them. The greatest fight the average advertising man has is in getting his material O. K.'d. I have spent weeks getting one advertisement O.K.'d in some institutions I have worked for. Everybody wants to put a finger in the advertising. The truth of the matter is that one advertisement is as good as another if it is not inaccurate as to facts, and no one advertisement is going to reach the entire community. Use one today that one man agrees to and one tomorrow that another agrees to. This is the best way to reach the entire community.

Put one man in charge of your department and make him responsible to your president. I think the trouble with the trust business in most institutions is that the president does not know much about it. You may have to educate your president in your work. Certainly the man in charge of your new business activities should be responsible to no one but your president. In other words, give him liberty and a chance to exercise his intiative and, if he cannot do it, fire him. If you have a new business man, turn him loose. Expect him to tell you what is going on and if he is the proper sort he will do so, but do not have the whole trust department trying to run him.

Rebuttal

SECRETARY MERSHON: Mr. Chairman, may I have sixty seconds for rebuttal? (Applause) About thirty years ago, when I was his age, I used to talk just about the same way. (Laughter) He stressed personal appearance—he has it, because he isn't old enough to have outgrown it. (Laughter) He has exposed himself to a lot of shots, and if we only had time to spend about an hour and a half on this subject, which is a very important one, he would be hunting for the back door or the other side of that screen, because there are a lot of bank presidents and vice-presidents whom he condemned pretty strongly, and they might go after him a little bit.

In combatting the thought which Mr. Chambliss has given us for the regrouping of advertising mediums, by putting booklets and folders first and local papers second, I would think first of reaching your indirect audience or the entire community, mass as well as class, and there is no better medium to reach mass as well as class than the newspaper; that is the best medium, in my opinion, to reach everybody in your locality, good, bad and indifferent.

The next steps, in proper sequence, are printed matter, letters, personal solicitation. I would take it in that order; he has it in another order. In order to reach the greatest number of people, you must use the newspaper; in order to reach a selected class, you would use printed matter; a more selected class, letters, and down to the final analysis, those people that you really want, personal solicitation. I do not agree with Mr. Chambliss that on the matter of the personal solicitation of trusts you cannot get any action or reaction from officers. Fred Ellsworth is going to knock that theory right out.

In regard to obtaining personal solicitors Mr. Chambliss said he called up people in order to get personal solicitors, and they came back with the question, "What do you pay?" And he says, "Oh, so-and-so." Well, its the "Oh, so-and-so," that I think we ought to have a long time to discuss, because I have men coming to me from all over the country, and as I travel throughout the country, I have men approach me on the matter of getting a trust man or a personal solicitor, and when I get right down to brass tacks with those men, and with some of you men here, perhaps, and you tell me, "So-and-so," and make it very indefinite, I wish to say to you that in nine cases out of ten, it is very inadequate, that "So-and-so," to buy the kind of a man you want to do that kind of work.

You want the highest type of man for that work; a man perhaps just a little older than Mr. Chambliss (laughter).

Now, Judge Hervey, if you can show the audience how we can harmonize these two pictures, I am through, and maybe you will be. (Laughter).

CHAIRMAN HERVEY: That is an impossibility, Ladies and Gentlemen. We trust people have spent many

thousands of dollars and a great deal of concern on the subject of advertising, and Mr. Chambliss and Mr. Mershon and other experts explain our mistakes and direct us in the course of activities that are profitable, but, after all the explaining and the direction, we are still at sea on the subject of advertising. It is the most important subject that I have heard discussed here today, because we are spending a great deal of money in this particular avenue; we all want more trust business and we all would like to reach the personnel of our community who properly should be doing business with us, and it is a very difficult thing to do.

I would, however, like to ask Mr. Chambliss one question, that is, how he selects presidents who will take an interest in the trust department? (Laughter).

MR. CHAMBLISS: I give up. I have been trying to do that for years. I have one in my own institution.

CHAIRMAN HERVEY: From the Atlantic to the Pacific, I have heard the comment, as you have on many occasions, that the trust department of a bank was the red-headed, freckle-faced, misunderstood stepchild, and I think that is true; that the co-operation on the part of the officials in the banking department is not such as we should have. I agree with Mr. Chambliss that we probably will never have that, because of a lack of understanding of the technical work which is done in the trust department, but the trust department is the banking of the future. We have the best goods on our shelves of any people who are serving the American public, and, after a while, our patronage will exceed the capacity of securing well-trained men to do the business.

(Adjournment)

Third Session

Thursday Morning, February 17, 1927

Mr. McLucas presiding.

CHAIRMAN McLUCAS: Our first subject this morning, "The Psychological Factor in Trust Investments," is to be presented by Mr. C. W. Fenninger, Vice-President of the Provident Trust Company, Philadelphia.

The Psychological Factor in Trust Investments

By CARL W. FENNINGER

Vice-President, Provident Trust Company of Philadelphia, Philadelphia, Pa.

MUCH has been said and written about the investment of trust funds from the technical point of view. It seems to me that the personal side of the work is quite as important as the technical and that we might profitably spend a short time in thinking of the subject from the personal standpoint. Although much of what is said may well apply to executorships, guardianships, and agency accounts, it is about ordinary trusteeships that I desire to speak particularly.

When an account is received, indeed before it is received if possible, the aim of the thoughtful trust official is to inspire in the clients associated with the account confidence in the trust company. It is my belief that in doing this successfully, much more depends upon meriting the confidence of clients by the character of the men associated with the company and the good management of trust estates than upon huge capital, surplus and undivided profits, or in fact any other item. After all, confidence in the management inspired by painstaking and thoughtful care of trust accounts is the key to success. In no part of the administration of estates is this more apparent or important than in the care of investments. Here you are dealing with the most important element of estates and errors or carelessness result many times in actual financial loss to the customer if not to the company involved, and almost always in the loss of the confidence and good will of the client.

Study of Controlling Instrument

THE first essential in the care of the investments is a thorough study of the instrument under which you are called upon to act. Many a false move is made through failure to do this. I recall a long and rather heated discussion in a case in our care where the right to retain some bank stock carrying a double liability was questioned. It was finally referred to counsel who very promptly called attention to the fact that the last clause in the will very definitely settled the question. Both our people and our clients had read what were thought to be all the investment powers because they appeared to be grouped, but the will, which was of the home-made variety although covering a large estate, contained in the very last paragraph a governing provision, evidently an afterthought of the testator. Every will, every trust agreement, should be carefully scrutinized not only by the investment officer but by counsel as well. We find it a decided advantage to have loose-leaf books containing a sheet for each account giving the investment powers

in detail, a legal opinion if there is one, and such other data as may be needed for the investment work. These sheets are never put permanently in our files until they have passed a reading by our Legal Department.

Contact With Clients

THE second essential step in developing an investment program is to get a correct understanding of the ideas of the client about investments. Our experience shows that clients may be divided roughly into three classes:

(a) Those who know nothing about investments and frankly admit it;
(b) Those who think they know, but who in reality have only a very superficial knowledge;
(c) Those who actually have had experience in the investment and care of money and who have studied in a careful and logical manner the principles of sound investment.

The effort to arrive at a client's ideas and knowledge should be made early in the relationship and by a personal interview between the client and the investment officer. By tactful inquiry the client should be brought to talk freely about his or her investment ideas. If it is found that the client has no investment knowledge and realizes it, the opportunity should at once be taken to explain in a general way your understanding of careful investing and the principles which you prefer to follow in the care of the case under discussion. You may thus lay a solid foundation for future action and by the frankness of your discourse make the person feel that you have his interests definitely fixed in your own mind.

The second class of clients are more difficult to handle. Perhaps the most successful method is to let them talk themselves out. In most cases they will do this and you will quickly obtain an idea of the extent of their knowledge, and can plan your policy accordingly.

The third group presents at the same time the most difficult and the most interesting class. They give you ideas and challenge yours. They stimulate you to your best efforts because you must meet them upon their own ground of experience and knowledge. It seems good policy in the first interview to direct the discussion as far as possible along general lines not failing to state your own views frankly, when asked, but devoting your attention primarily to getting a real understanding of the man's preferences and his reasons for them. It is always good policy in cases of this kind to defer definite suggestions and plans until a thorough study can be made of the account.

The object of this personal investigation into the knowledge and ideas of clients is, therefore, two-fold: First to get their points of view, and second to fortify yourself against false moves. I do not mean in the least to suggest that this interrogation of a client should be for the purpose of taking advantage of him. If he thought it was, he would probably resent it very deeply, and rightly so. It should be conducted with the thought of getting and keeping his confidence. If in a first interview you start out with a discussion of railroad bonds and their value to your client, and suddenly find he has a distinct prejudice against them, you are likely to compromise your own position and shake his confidence in you, without helping him at all. The better plan is to ask him if he has been accustomed to purchase railroad bonds or utility bonds. In other words, get him started along his own line. If you then find that he has been wrong in his ideas about railroad bonds, you can plan to overcome this prejudice gradually and do it in a business-like way that he will appreciate.

Study of Investments

AFTER such a conference you are in much better position to take up the purchase of investments, or if the fund is already invested to rearrange it properly. It might be well to emphasize again at this point the advisability of deferring any detailed discussion of the investments until you know the feeling of the client and have had time to study the character of the investments handed you, their security, income return, marketability and diversification. When you have done this, you can then lay the whole plan out in the form of a suggestion, perhaps in a letter, to your client.

At this point we might also call attention to the chief difference found in the investment of the funds of a testamentary trust as compared to the voluntary trust. You never deal with the owner of the securities in a testamentary trust. He has passed on and left you to cope with the ideas and needs of one or perhaps a dozen people. Your task is usually more difficult and the results less satisfying to all concerned. On the other hand, in the voluntary trust you have the opportunity of dealing almost exclusively with the maker of the trust, and when he is satisfied, those who derive benefits from his action accept the result of the trust management, knowing he is in touch with it. It may generally be said, therefore, that greater consideration has to be given to the personal side of your work in testamentary trusts than in voluntary trusts and it is well in these cases to put your most tactful men on this investment work.

In taking up the study of the account itself, a very natural and usual way is to have a clerk analyze the account by setting out in tabulated form the following facts:

(1) Total market value of all securities.
(2) Total market value by classes, i. e.
- Railroads
- Public Utilities
- Industrial
- Government and Municipal
- Mortgages in real estate
- Real Estate
- Miscellaneous

In the company with which I am connected, this outline is made upon cards, one card showing the name of each security, the market value, the maturity date and the amount held; the other card being a summary card showing the market value of each class as well as the total market value of the trust. After the preparation of this data, it takes only a short time to reach a conclusion as to the general stability and diversification of the investments and to decide upon the general changes needed to bring the trust to the standard you set. Usually it develops in this study of the account that certain investments are not readily marketable, do not conform to your standards, and must be considered upon their own merits without respect to the general character of the account. Let me illustrate what I mean by an example. Some years ago one of the traction systems in a large city became insolvent and many of the bond issues fell both rapidly and radically in price. Accounts coming in at that time called for special consideration in the care of these issues. The study of the position of these bonds was very difficult, but those who did go into the company's affairs deeply enough to see the real merit of the bonds and had the courage to see the thing through have been rewarded by largely increased market values. Cases of this kind cannot be decided upon the general question of whether or not you have too many bonds of that class in your investments, but upon a special study of the problem. It may be essential to carry for a time an unbalanced list. The important thing is to know that there are good and sufficient reasons for doing so and that you have investigated the situation carefully enough to satisfy any reasonable person that you have acted in good faith and upon proper information.

Having made a study of the instrument under which you act, interviewed your client and established a basis for harmonious action, and having critically surveyed the securities in the account, you have taken the first and perhaps the most important steps in your investment work. The psychology of these steps is in knowing what your legal rights are, in understanding reasonably well the mind of your client, and in finding the right way of adapting his method of thinking to the policies which you know to be right and for the best interest of the case. If this work is rightly done, there is little doubt that you will win the confidence and friendship of your customer.

Record of Investment Progress

ONE of the most important things to have in your investment record is a memorandum of each talk with your client. This can be easily kept in chronological order under each account. Many a misunderstanding is cleared up and many a responsibility fixed by this data.

At a meeting of some of the trust men, here in New York yesterday, that very question was discussed, and it was felt that it was one of the most important things to have in your records. The feeling seemed to be, however, that it was a very difficult thing to do. I might say that, in our own organization, we have not found that to be the case. Every man in our trust administration department is supposed to make, some time during the day, a memorandum of the important points in interviews which have been held with clients during that day. The same is done in our investment department. The result of it is that we have, for every account in our care, a chronological history of the interviews and discussions which have taken place in regard to it. This is filed in two ways: First, in a chronological record, where you can read each day's proceedings, if you care to do that, and, secondly, under each individual account. This diary is made up on an ordinary 8½x11 inch letter sheet, one account after the other, and, in the Filing Department, these items are cut apart and pasted to filing sheets under each account. We have found it extremely valuable.

Continued Good Management and Its Essentials

IN reality however, this is only the first stage of your work and it is usually done in a comparatively short time. The real test comes in maintaining during the years of the trust, be they few or many, the confidence of your clients. The management that accomplishes this:

1. Must be in the hands of good practical investment officers possessing a real knowledge of securities;
2. Must be conservative without being narrow;
3. Must be supported in its conservative position by the action of the company itself in making conservative investment of its own funds;
4. Must see that continuous supervision is given to every investment held;
5. Must be equipped to keep the money entrusted to it invested properly and consistently in the kind of securities fitted to each trust.

In addition, it is most advisable for the investment officers to keep themselves well informed as to changes in investment conditions, and to be in position to obtain the help of men who are in close touch with matters of this kind. Much can be accomplished in this line through members of the boards of directors of our institutions, and it is desirable to have the officer primarily responsible for the trust investment work meet with the members of the board of directors and the finance committee.

A few comments on these requirements may be helpful: As to the first it should always be a rule to man your department with men equipped for this kind of work. If the size of the business warrants it, there should be several of them and of different types. Aside from the manager, it is well to have at least one good analyst, a fellow who knows where to lay his hands on information and how to use it when he gets it. Another important type is the man who is able to keep in close touch with the markets for the securities in the company's

care and who knows prices well enough to discriminate between offerings which are "on the market" and those which are too high. For tabulating work, and filing of statistical data, girls are most satisfactory. In our case the watching of calls, sinking fund notices, corporation meetings, etc., is done by girls, who report all things of this kind affecting our accounts to a man who knows the accounts and the proper method of handling the information. The development of the business courses at the University of Pennsylvania, the Harvard Business School and others has made it possible to get well equipped men capable of being quickly trained in your ways of thinking.

The second requirement is a very important one. I am reminded of Puddin' Head Wilson's statement about the month of October. He said "This is one of the peculiarly dangerous months to speculate in stocks in. The others are July, January, September, April, November, May, March, June, December, August and February." One of the popular conceptions seems to be that the trust company upon getting a fund into its hands immediately sells all the good old stocks and bonds that have been the pride of the family for a generation or two, and invests in Government bonds and mortgages. In these days when the tendency is to give trustees specific powers to retain investments left in their care and to authorize them to invest in other than legal securities, it is neither necessary nor wise arbitrarily and without reason to convert securities. It usually results in unnecessary and sometimes disastrous clashes with the parties interested in the account. In addition to this, every time you make a new investment you assume a new responsibility. The real line of work is to be conservative in both the conversion of securities and the buying of securities, and always to be in position to give a good reason for your action.

Consultations With Clients

AT this point, it seems worth while to consider for a few minutes a point upon which there has been a difference of opinion. This is the problem of consulting parties interested in trusts about the investment of the funds. Some trust men feel that the responsibility is the trustees' and that therefore they should dictate to the fullest extent the investment policy. In the final analysis of the question this view is correct, but I wish to point out to you that there are two sides to the matter and that much may be gained by reasonable consideration of the views of the parties interested in the fund. After all, are we not administering the trust for the benefit first of the life tenants and second of the remaindermen, who in many cases are closely associated with each other? Under these circumstances, is it not reasonable that interested people should feel justified in asking the trustee to take cognizance of their views? I think it is. I believe, therefore, it is good business to keep clients advised, at least by showing in periodical statements the changes in the investments as well as the transactions involving income. It is also good practice, in my judgment, to consult with beneficiaries, at least whenever changes of an unusual character are to be made. In doing this, it is entirely right that the investment officer should have in the back of his mind the thought that he cannot delegate his investment authority. If however he can explain the trustees' point of view and get the co-operation of his clients, perhaps to the extent of a written approval of the proposed changes, he has fortified himself against future criticism and perhaps loss. No better method of emphasizing this can be taken than to cite cases where this method has proven valuable, and I will cite just one. In this case certain security purchases were made which did not fall within the class of legal investments. Although the trustee was authorized to make such investments, the trustee took the precaution to advise the parties in interest and ask their approval. This approval was given. Later when substantial losses resulted from these investments an attempt was made to surcharge the trustee. The court held that no surcharge could properly be made and that the approval estopped the parties in interest from complaining. The ability to lay down before a client a record of his action in any given case is worth a great deal to you.

Another valuable consideration is that if the clients are disposed to object, you give them the opportunity of doing so at a time when the question can be talked over with all the facts freshly in mind, and if you have a record of these talks, questions which may arise long afterwards may be settled without great difficulty. It is my belief that much friction and some litigation are saved by reasonable care in this respect.

The third thing mentioned is the matter of the institution's own investments. I speak with some hesitancy here because each institution is a law unto itself and naturally feels that its methods of investment are satisfactory. However we have all seen cases where conservatism was not the rule and when the public mind has been disturbed by failure on the part of trust companies to adhere to conservative principles. If a security is not sufficiently high grade for a trust account, do you want it for your stockholders account? One of the strongest factors in the development of the business of the company with which I am connected is the fact that with its annual statement it publishes a complete list of its security holdings. The publication of this list has great advertising value, and the mental reaction on the part of the public is most favorable. We have on several occasions had favorable comments and business come to us from places far removed from our own city as the result of the publication of this list.

Continuous Supervision

THE fourth element of good management is the assurance to your clients that there will be continuous supervision of every investment held. This item is

worthy of a rather careful study, since it affects perhaps more than any other thing the continuance of your clients' confidence in you. I shall try to discuss this in some detail and I hope it will promote some discussion, because I regard it as extremely important. One of the questions frequently asked by prospective clients is this: If I give you these securities, what assurance have I that they will not be stored away in your vault and forgotten; and how do I know that ten years from now, through your failure to watch changing conditions, the value of my account will not be impaired? It is a very proper inquiry, and we should all have our work so systematized that the question can be answered fully and the proper assurance given. It seems worth while to discuss a typical method of conducting this work, and I shall describe such a method as briefly as possible. The problem must be approached from two directions:

1. From the standpoint of the account itself.
2. From the standpoint of the securities held, irrespective of the accounts in which they may be held.

The first of these is accomplished by the periodical examination of each account. In doing this, much the same process is followed as suggested for the study of new accounts. More attention, however, is paid to changing investment conditions, maturities are scrutinized more carefully and special consideration is given to the diversification of the account. Each time an account is reviewed, an effort should be made to bring it more fully into line with the original standard set for it. This work is best entrusted to someone who can quickly and methodically go over the accounts and who has the faculty for checking up all unusual investments. You will recall the suggestion made a few minutes ago about accounts which had investments that needed "nursing." This is the most practical method of watching these because in these cases the character of the investment must almost invariably be considered in relation to the account in which it is held, and there is no better way of doing this than by reviewing the account and at the same time checking the investment.

The second of these checks is also very important and should be entrusted to a man of analytical mind. For his work he should have at his command a well equipped statistical library containing the usual investment manuals, files of the Commercial and Financial Chronicle and such other current financial periodicals as may be needed. In addition to these, some of the investment services, such as Moody's, Standard Statistics, etc., are extremely helpful. Money spent on these things is money well spent.

Investment Record

EVERY company should maintain, whether the books and services suggested are on hand or not, a special file covering every investment in hand. There is a great deal to be gained through the use of original sources of information. This file should contain all correspondence relative to the investment,—annual reports, investment circulars, miscellaneous papers such as notes of annual and special meetings, dividend notices, particularly those referring to special and stock dividends, clippings and special reports. In the case of bonds, a copy of the indenture securing the issue should be on hand.

It is a comparatively easy matter to start a file of this sort but it is not so easy to see that it is always kept up to date. It is still more difficult to see that it is intelligently used.

The method of keeping it up to date is probably best insured by the use of a card tickler arranged so that each investment has a card containing a record of the things to be obtained, from whom they are to be obtained, and such other data as will assist the clerk in charge to go after the needed information intelligently. These cards should be arranged so that they will come up at least once each year, preferably about the time of the annual meeting of the organization.

If when a security is first reviewed, it is decided to hold it, a decision should be made as to the amount of supervision to be given it. This of course can be done only roughly because while in theory every investment needs almost constant care, practically this cannot be given. It is obvious however that there is a vast difference between the attention needed for proper care of Pennsylvania Railroad Consolidated 4% bonds and Indianapolis Northern Traction Company First 5's. The tickler card should, therefore, in the case of the Pennsylvania Railroad come up for consideration say once a year, while the Indianapolis Northern Traction card should come up perhaps four times a year. Some cards must necessarily come up monthly.

As previously stated the real trouble with this file is to see that it is intelligently used. If it is not, I doubt if it is worth the time and money needed to keep it up. When it once becomes known among people seeking trust service that real and substantial supervision is given all investments, the mental reaction is most favorable, and confidence in the institution is increased. Many illustrations might be given of the value and usefulness of this work, but I will cite only two,—quite different in character, but helpful to both client and trust company. The first of these was the case of a very successful business man who, having created a large voluntary trust with us, still desired to be consulted about investments. It was one of those cases where mutual understanding exists and the utmost frankness is possible. He suggested for the account certain bonds which had been offered him by a friendly bond salesman. Our investigation showed that unfavorable criticism could be justly made of the management of the company and that a substantial part of its income was derived from sources of doubtful future. Needless to say, the suggestion was at once withdrawn, and I am sure that our position with him is stronger than ever. The other case was one in which we had become interested, again through the creation of a voluntary trust, in an old well established manufacturing business which, however, had not in recent years

been particularly successful. It so happened that one of the men in our Department in looking over some basic industry studies ran across an analysis of the market position of a commodity composing a very large part of the raw material of this business. The record was immediately sent to the president of the manufacturing company, and while it is still too early to measure the results of his action based on this study, we believe it will result in substantial benefit to the business. Even if it does not, the psychological effect of our action has been marked.

Management of Going Business

THERE is one problem we all face from time to time that is perhaps more difficult than any other. I refer to the management or participation in the management of a going business. Work of this kind requires the closest study of the personal elements involved, and too much attention cannot be given to them. In every case the greatest care should be used in approaching the problem and in gaining the respect and confidence of the men associated with the business. Some times this can be done quickly, but usually it takes time. Patience is a real virtue here, unless of course the condition of the business calls for drastic action. No trustee can take over a business and ignore the people in it. I recall one case where it took practically a year to bring the management of a corporation to the point of revising their accounting methods which had become totally inadequate, with the growth of the business. In this case the control did not rest in our hands and it required the greatest care and tact on the part of our representative on the Board of Directors to get this change made without offense to the officers. Of course now that they have it, they would not be without it. This brings me to the question of directorships. It is my belief that it is better for a trustee to be represented on the board of a corporation in which his trust has a large interest and to make honest mistakes in his work there, than to hold aloof from participation in the management and subject himself to charges of negligence for his inaction. In other words, it is better to be inside looking out than outside trying to look in.

In closing, let me emphasize again the thought that the personal side of investment work is as important as any other and that earnest effort should be made to select and train the men who are entrusted with it. No greater asset to a company can be found than a clientele having reliance in the judgment and accuracy of the investment department, and good business psychology demands that you obtain and keep throughout the life of every trust the confidence of your customers.

CHAIRMAN MCLUCAS: You will all agree that this is a very valuable paper that has just been presented and suggests many questions for discussion. We cannot go into the matter in an extended way, but if there is any question someone would like to submit just now, please do so.

Examine by Securities or Estates?

WILLIAM G. LITTLETON (Vice-President, Fidelity-Philadelphia Trust Company, Philadelphia): I would like to ask Mr. Fenninger a question, I know him quite well and I have a great respect for his opinions. In reviewing the securities of your trust department, do you think it is a better method to examine the securities, or to take the estates and examine the estates dealing with the securities in the estates as you come to the securities, or whether the other plan does not give you a quicker view of the security field? I ask that question because it is a burning one with me at the present time. I have been trying to follow the plan of examining all the securities as securities, but with the constantly reiterated warnings from our Supreme Court as to the review of the trust estates themselves, I am sometimes a little worried to know whether the Court is going to approve of the first method, although to my mind it is very much more the economical method and you can reach the securities without duplications, whereas, if you start in with Anna Abbott's estate, and wind up with Zena Zetter's, you probably will have to consider the same securities many hundred times before you get through, and the question is, which method is going to give you the better results in your trust department?

MR. FENNINGER: We follow both methods, as far as practical. We go so far as to have a complete review of the trusts by the entire Board of Directors. I quite agree with you that the quickest and most satisfactory way to watch the investments is from the investments, themselves. In other words, if you are dissatisfied with an investment in one account, you are probably dissatisfied with it in all accounts, but that might not be the case, because the man who created the trust might have some special ideas of his own in regard to that investment, and might have approved of your continuance in holding, and, for that reason, it is essential that the trust must be reviewed from the trust's standpoint. I think it is, perhaps, good business to keep those two things separated, if your organization is large enough to do it, and have some way of going over your accounts pretty regularly.

In our case, every time an account is reviewed a note is made of the review on the card record, so we can always tell when an account has been reviewed.

MR. LITTLETON: That answers me fully, and I am afraid you are absolutely right.

MR. FENNINGER: I think those of us, in Pennsylvania, take a little comfort from the decision handed down by the Supreme Court in the case of Brown's Estate, which has just been reported in the last "Reporter." If you have not read that, it is worth reading, because it follows on top of Taylor's Estate, but takes a somewhat more lenient view of the attitude of the courts on trust investments, and that decision is well worth reading.

JUDGE HERVEY: Mr. Fenninger, you say you make

an annual publication of the securities held in your trust?

MR. FENNINGER: No.

JUDGE HERVEY: You do not publish a list of "cats" and "dogs" you find in safety deposits?

MR. FENNINGER: I was speaking of the company's own investments that are held for the company's account as being a fair measure of the attitude of the company toward its own fund.

CHAIRMAN MCLUCAS: The next subject, "The Merger Law as Applied to Trusts (with some reference to practical difficulties)" will be presented by William Rhodes Hervey, Vice-President of the Pacific-Southwest Trust and Savings Bank, of Los Angeles, California. We call him Judge Hervey and Chairman of the Executive Committee (Trust Company Division, American Bankers Association).

The Merger Law as Applied to Trusts

With Some Reference to Practical Difficulties

By WILLIAM RHODES HERVEY

Vice-President, Pacific-Southwest Trust and Savings Bank, Los Angeles, California

MR. PRESIDENT, Ladies and Gentlemen: I may bore you this morning though I trust not beyond endurance, because the discussion I am undertaking is a bit technical and because, due to its technical nature, I have reduced it to writing. At the outset, it is only fair to say that I will discuss the matter largely from the standpoint of the California law, for two reasons: first, I am more familiar with that law than any other, and, secondly, California has a rather strong statute on the subject that I am discussing, and it is quite analogous to that of New York, so I shall treat this subject from the standpoint of California and New York, although many states have statutes that are analogous and many states have no statutes whatsoever governing this question.

In the expansion and development of modern business machinery, it becomes expedient and desirable at times for a corporation possessing and exercising trust powers and functions to transfer its powers and obligations to another corporation. Such a transfer results from the sale of the business, from the conversion of a state bank into a national bank or a national bank into a state bank, from a consolidation of two or more corporations or a merger of one or more corporations into another provided that the corporation selling, converting, consolidating or merging, are authorized by law to engage in the trust business. Transfers of this character raise legal questions of serious moment and involving great difficulty. It is the purpose of this address to consider in a casual and sketchy manner some of these questions and to direct attention to the trend of legislation, decision and practice with respect thereto.

An individual trustee may resign, die or be removed. A succeeding trustee is appointed in conformity with the terms of the trust agreement or by a court of competent jurisdiction. The proper procedure is beset with no difficulties. The individual is the trustee of but few trusts at most. The appointment of his successor relieves him, or his estate, not only of liability but also of further interest or concern in the matter. The office of trustee with him is secondary to his main business and is merely an incident in his professional or commercial career.

The case is vastly different with the corporate fiduciary. It is trustee of a large number of trusts involving a great variety of duties and responsibilities and representing a very substantial amount of property. Its trustors and beneficiaries are a widely scattered legion. Its business has been built up by long effort and at considerable expense and the business is the source of present and future profit as a reward for that effort and expense. Acting as trustee is to it no secondary or incidental matter—it was incorporated and licensed to act as trustee and that is its primary and important business. When it converts, consolidates or merges, it is still vitally interested and concerned that the trust business developed by it, be enjoyed and continued by the institution into which it converts, consolidates or merges. It has not resigned, died or been removed but has only changed its status. The ordinary procedure for appointing succeeding trustees takes much time, is expensive and, for a large trust company, is practically an impossibility. For our present purpose, I have excluded from consideration all trust titles, offices and powers created by instruments which, in terms or effect, prohibit the substitution of a succeeding trustee otherwise than with the consent or approval of the trustor and the beneficiaries, or some one or more of them. If the instrument creating the trust prescribes the sole method of appointment, then such method and no other can be adopted.

New York and California Statutes

IN order to meet the difficulties of the situation, some of the states, notably New York and California, have enacted legislation to provide for the transfer of trusts in certain cases by operation of law, and the Congress in 1918 passed the Federal Statute for Consolidation of

Banks (503a) which has been construed to extend to the transfer of trusts. The New York law providing for the merger of banks is substantially the same as that of California.

Section 31 of the California Bank Act covers the subject of the sale of the business of one bank to another and provides among other things for the "assumption by the purchasing bank of all fiduciary and trust obligations of the selling bank" and that the agreement of sales may contain provisions for the transfer of all court and private trusts to the purchasing bank subject to the right of trustors and beneficiaries, after the transfer, to nominate another and succeeding trustee of the trusts transferred and that all the rights, obligations and relations of all the trustors and beneficiaries of trusts shall remain unimpaired by the sale but that upon the approval of the superintendent of banks of the agreement of sale "the purchasing bank shall *ipso facto* and by operation of law and without further transfer, substitution, act or deed, and in all courts and places, be deemed and held to have succeeded and shall become subrogated and shall succeed to all rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person depositor, trustor, principal or beneficiary of any court or private trust, obligations and liabilities of every nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation of trust or incurred the obligation or liability."*

Section 31(a) of said act covers the subject of the consolidation of two or more banks and provides for the carrying over to the new or consolidated corporation of all trust powers unimpaired and as fully as set out in Section 31 in case of sales.

Section 31(b) of said act authorizes any two or more banks to merge one or more of them into another of them and, among other things, provides that upon such merger of any corporation into another:

"(a) Its corporate existence shall be merged into that of such other corporation, and all and singular its rights, privileges and franchises, and its right, title and interest in and to all property, real, personal or mixed, and choses in action, and every right, privilege, interest or asset of conceivable value or benefit then existing or which would thereafter inure to it under an unmerged existence shall be deemed fully and finally, and without any right of reversion, interruption, impairment or limitation of title, right or privilege, transferred to and vested in the corporation into which it shall have been merged, without further act or deed, and such last mentioned corporation shall have, hold, possess, enjoy and enforce the same in its own right, as fully as the same was possessed, enjoyed and held by the merged corporation from which it was, by operation of the provisions of this section, transferred.

"(b) Its rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts, as defined in the bank act, and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, shall remain unimpaired and without change or alteration in any respect, and the corporation into which it shall have been merged shall, by such merger, *ipso facto* and by operation of law, without further transfer, substitution, act or deed, and in all courts and places be deemed and held to have, and shall become subrogated and shall succeed, to all such rights, obligations, properties, assets, investments, deposits, demands, contracts, agreements, court and private trusts and other relations to any person, creditor, depositor, trustee, principal or beneficiary of any court or private trust, obligations and liabilities, of every kind or nature, and shall execute and perform all such court and private trusts in the same manner as though it had itself originally assumed the relation or trust or incurred the obligation or liability; the corporation into which it shall have been merged shall succeed to and be entitled to take and execute and receive the appointment to all executorships, trusteeships, guardianships, and other fiduciary capacities in which the merged corporation may be then or thereafter named in wills theretofore or thereafter probated, or in any other instruments; and the liabilities and obligations of such merged corporation to the depositors, beneficiaries, principals and other creditors existing for any cause whatever shall not be impaired by such merger; nor shall any obligation or liability of any stockholder in any corporation which is a party to such merger be affected by any such merger, but such obligations and liabilities shall continue as fully and to the same extent as existed before such merger."

Does Power Extend to National Banks?

IF the provisions of the foregoing statutes are free from constitutional objections, it is clear that state banks in California and in states having similar statutes, have the power of sale and purchase, consolidation and merger, and such power is broad enough to cover the transfer of trusts. It is not equally clear that a national bank has these powers for such powers could be conferred only by Congress and could not be conferred by state legislation. Congress has thus far refrained from conferring upon national banks any powers except of a general character and has not conferred any express power of purchase or for consolidation or merger with state banks or for the assumption of trust liabilities. While there are good grounds for doubting that a national bank invested with trust powers is also invested with the power to purchase the trust department of another bank and assume all the liabilities and obligations appertaining to such trust department, yet it is the pre-

*In California, by statute, our trusts are divided into two classes, court trusts and private trusts. Court trusts being those which proceed from an appointment, as an officer by the court, or from a decree or judgment of court, while private trusts rest upon contracts between individuals and corporations.

vailing opinion that the courts would hold that the incidental power to do so exists. There are no pertinent cases yet determined to guide us to a certain conclusion on the subject. It is certain that a national bank has no power to consolidate or merge with a state bank, nor a state bank with a national bank.

Statute Not Trust Agreement Must Determine

THE rules of law applicable to sales and purchases, to consolidations and to mergers are so analogous that the three subjects, for the sake of brevity, will be considered together.

It is argued that a bank selling, consolidating or merging has ceased to exist and hence is incapable of continuing to act as trustee; that a new trustee must be appointed as successor to such bank; and that the purchasing bank, or the consolidated bank or the bank resulting from a merger, as the case may be, not having been named or appointed trustee by the parties or by a court of competent jurisdiction is not a succeeding trustee.

The rights, franchises, offices and privileges of a corporation resulting from a purchase, consolidation or merger, depend upon the intention of the legislature as manifested by the statute authorizing the sale, consolidation or merger. The legislature may confer upon it all the rights, franchises, offices, privileges and property of the selling, consolidating or merging corporations, or it may add new rights, franchises or privileges.

The statute above quoted shows clearly the intention of the legislature that in the case of a sale the purchasing corporation shall succeed the selling corporation as trustee of the trusts formerly administered by such selling corporation and exhibits a similar intention with reference to a consolidated corporation or one into which one or more corporations are merged. The transfer of office and title in trust in such cases is a transfer by operation of law and is not a transfer by virtue of or under the terms of a deed, decree or other instrument or judgment. Whether such a transfer has been made must be ascertained from an examination of the statute and not from the terms of an instrument creating the trust. The language of the statute is so plain and clear that it can not be contended that a transfer in trust is not accomplished thereby if the legislature has power to enact a statute providing for such transfer.

Constitutionality of Statute

THE question resolves itself into one of the constitutionality of the statute—Does it "impair the obligation of the contract?" The Constitution of the United States provides that no state shall pass any act or make any law the effect of which is to impair "the obligation of a contract." If it does not impair the obligation of the contract it is a constitutional and valid statute. It may be argued that a contingency has happened upon which a new trustee must be appointed and that the parties to the trust agreement have provided a method of appointment and that any law providing for the succession of the trustee impairs the obligation of the contract. The argument is weak because no such contingency has happened. What the parties to the trust intended as the event requiring a new trustee to be appointed was the failure of the trust for the want of a trustee—an hiatus in the trusteeship. There is no such failure and no hiatus, for there is now a trustee of the trust provided by force of the statute. If we assume that the contingency has happened, can we say that the parties intended in such event that the succeeding trustee should be named by the parties or by the court and in no other manner? Did they provide the *exclusive* manner of appointment and contract against an appointment in any other manner or by operation of law? If a trust instrument did not provide that a new trustee could in any case be appointed by a court of competent jurisdiction, surely it would not be contended that the parties had ousted the court of its power and jurisdiction or that the contract had been broken by such appointment.

Parties contracting with a corporation are presumed to contemplate the possibility of the corporation doing any of the things permitted or required by law;—that it may sell, consolidate or merge with all the resultant consequences of such action even though such action would change and modify the contract between the corporation and the individual.

Court Decisions

IT has been held by the Supreme Court of Illinois[1] that a trust created by a will does not constitute a contract and that a subsequently enacted law affecting the rights of a beneficiary does not impair the obligation of a contract within the meaning of the Federal Constitution for the very good reason that there is no obligation of a contract involved in such trust to be impaired. The courts would undoubtedly hold deeds of trust, many forms of declarations of trusts and other conveyances to be contracts so that a trust business of any considerable magnitude would upon transfer involve many trusts of a contractural nature.

The Supreme Court of South Dakota[2] held valid and constitutional a law which swept away from a mortgage under a prior existing mortgage the power of sale vested in him and gave the sole and exclusive power of making the sale to the sheriff.

The Constitution of California provides that "all laws now in force in this state concerning corporations, and all laws that may hereafter be passed pursuant to this section, *may be altered from time to time or repealed,* and the Supreme Court has held[3] that an act authorizing the consolidation of street railway companies does not

[1]Arnold vs. Alden 173 Ill. 229 (50 N. E. 704).
[2]Brown vs. Hall 32 So. Dak. 225.
[3]Market St. Railway vs. Hellman 199 Cal. 571.

operate to impair the obligation of a contract entered into by a stockholder in subscribing for stock and that the subsequently adopted act constituted an amendment of the charter of the corporation and that the stockholder in question must be deemed to have contracted with the corporation on the understanding and agreement that he would be bound by such a subsequent amendment of the charter.

Pennsylvania College Cases

THE Supreme Court of the United States has passed definitely on the exact question in the Pennsylvania College cases.[4] One college merged with another under an act of the legislature authorizing the merger. Prior to the merger certain prospective students of the merged college had paid money for contracts of scholarship which gave them the right to attend the merged college without further compensation. The merged college was located near these students while the merging college was located at a distance from their homes. The merger subjected them to expense and inconvenience. The flat question of the impairment of contract was presented. The court held that the act and the merger did not impair the obligation of the contract within the meaning of the Constitution of the United States for the reasons:

1. That the constitution of the state reserved the right of the Legislature to alter or amend the charter of any corporation from time to time.

2. That the said students must be deemed to have contracted with the merged college under the implied agreement that if the charter was amended under authority of a subsequent act of the legislature, he or she would be bound thereby.

3. That said act and merger provided that all obligations of the merged college should be assumed and carried out by the merging college and therefore no vested right of the students was swept away.

Equitable Trust Company Case

UNDER the New York Bank Act, the Equitable Trust Company began proceedings to merge into the Mercantile Trust Company. Many stockholders of the Equitable had subscribed for their stock prior to the going into effect of the merger act. The Constitution of New York in effect at the time of the organization of the Equitable contained a reservation providing for the alteration or amendment of charters of corporations by the legislature. A stockholder brought action to enjoin the merger and prevailed in the trial court. On appeal the case was reversed on the ground that under the constitution of the state the legislature had the power to amend the charter of the Equitable Trust Company by changing the law so as to authorize it to become merged into another banking corporation and that plaintiff must be deemed to be bound thereby.[5]

[4] 13 Wall. 190.
[5] Colby vs. Equitable Trust Co. 108 N. Y. S. 978.

McElwain vs. Primavera

IN McElwain vs. Primavera,[6] the court said, "Dealing with the original banking corporation, the defendant subjected himself to the possibility of a merger and the enforcement of the contract by a new corporation, which is new, so far as the defendant is concerned, in name only. The provisions of Section 37 of the Banking Law are very broad. The legislature did not contemplate that the property merged in another should vest in the corporation in which the merger takes place by operation of any assignment, or that such transfer should be attended with the usual rules of law with respect to assignments." The court also said "There was no personal equation so far as the original corporation was concerned, since its entire directorate and management might be changed without affecting the guaranty. Its entire capital stock might have changed hands and the policies of the company have been materially altered."

U. S. Supreme Court Decision

THE principle justifying reference to the laws existing at the time of the making of the contract for purposes of construction has been broadly stated in a recent decision of the U. S. Supreme Court as follows: "Laws which subsist at the time and place of making a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement and discharge."[7]

The most serious question in connection with transfers of trusts by operation of law and the constitutionality of laws therefor arises in reference to the apparent invasion or interference with the power or sphere of the judiciary. This invasion is illustrated by the provision for the substitution in pending proceedings of a new executor, administrator, guardian or trustor without notice to or approval of the court and without reference to the condition or stage of progress of the proceeding to which the office appertains. While a positive danger lurks in this category it should be remembered that the statutes referred to make provision that every transfer shall be subject "to the right of trustors and beneficiaries to nominate another and succeeding trustee to the trusts so transferred" and also that full and definite provision is made that the superseded officer remains bound for its liability and obligations and the succeeding trustee shall be bound for the same liabilities and obligations.

Bergdorf's Will Case

A LEADING and interesting case on this subject is in re Bergdorf's Will.[8] Bergdorf in his will

[6] McElwain vs. Primavera 167 N. Y. Supp. 815.
[7] 262 U. S. 649.
[8] In re Bergdorf's will 99 N. E. 714.

named the Morton Trust Company executor and trustee. Prior to his death the Morton Trust Company was merged and consolidated with Guaranty Trust Company under the New York statute. On the death of the testator it was urged that the Guaranty Trust Company was not entitled to act as executor or trustee. The Guaranty Trust Company contended that the Morton Trust Company survived the merger and still existed as a part of the Guaranty. The court held the Morton Company to be non-existent for all purposes except the single one of being sued on causes of action existing at the time of the merger. The court quoted the pertinent sections of the Bank Act and then said "In reading the sections we do not regard the intention of the testator, but that of the legislature. Their language is broadly and conspicuously comprehensive. The merger transferred to the Guaranty Trust Company all and singular the rights, franchises and interests of' the Morton Trust Company. 'In and to every species of property, real, personal and mixed and things in action thereunto belonging.' . . . Every right, privilege, interest or asset of conceivable value or benefit then existing which would inure to the Morton Trust Company under an unmerged existence should inure to the Guaranty Trust Company. Nothing appertaining to the Morton Company was to be lost, forfeited or destroyed."

"The designation of the Morton Company as an executor created a privilege or an interest in the estate of the testator appertaining to that company. The privilege or interest was not complete or vested. It was incomplete, potential and ambulatory. From it, undisturbed until the testators death, issued the absolute interest of an executorship and the power to participate in the control and administration of the testators estate and receive the legal fees and commissions. That interest had no source or origin other than the will and the designation. The testators death did but complete and vest that which theretofore existed. It existed, although in an incomplete, imperfect and dependant condition, from the making of the will and at the time the merger of the Morton Company was consummated. Ignorance on the part of the Morton Company of its existence did not affect it. Through it that Company would have been an executor and entitled to letters testamentary if it had 'continued to retain the title and transact the business of such corporation'. The merger transferred it to the Guaranty Company, and in effect, substituted that Company for the Morton Company. The Guaranty Company was entitled to hold and enjoy it even as would the Morton Company under an unmerged existence. *By virtue of the statute, effective as a part of the will,* the Guaranty Company was designated as an executor, and as such is entitled to receive the letters testamentary."

An Illinois Case

ANOTHER instructive case arose in Illinois where a testator nominated Real Estate Title & Trust Company as executor but died subsequent to the time when the Real Estate Title Company consolidated with the Chicago Title & Trust Company by virtue of a statute authorizing such consolidation. The will was admitted to probate and letters testamentary issued to the Chicago Title & Trust Company. The question was raised of the right of the Chicago Company to succeed to the executorship as the successor of the executor named in the will. The court held that by the consolidation the consolidated company acquired and succeeded to all the faculties, property, rights and franchises of its component parts; that the general rule that a trustor can not delegate his authority interposed no obstacle to the appointment of the Chicago Company for the reason that the element of trust in the judgment and discretion of an individual is entirely wanting in the case of a corporation; and the court said, "A corporation is without personality, and if it is selected as trustee or executor there can be no reliance upon individual discretion or even upon the continuance of the same administration. Etta Nelson, in naming the Real Estate Title & Trust Company as executor and trustee, knew that its directors, offices and stockholders might change from time to time, and that the statute authorized a change of name or place of business, enlargement or change of the object for which the corporation was formed, an increase or decrease in the capital stock or change in the number of shares or par value, increase or decrease of the number of directors, and the consolidation of the corporation with any other corporation then existing or that might thereafter be organized. She, therefore, contemplated that these changes might occur and that the Real Estate Company might be consolidated with some other corporation such as the Chicago Company and that it would thereby cease to exist and become a component part of a new corporation. A consolidation took place and a new corporation was created, with enlarged capital stock and unimpaired franchises. The appellee was entitled to execute the trust."[9]

Practical Reasons

AFTER a careful survey of the whole subject matter and having given due weight to many objections and obstacles that are apparent it seems that the laws for the transfer of trusts in the manner above indicated are sustained by authority and for the following practical reasons:

1. The difficulty, if not legal impossibility, of effecting a sale and transfer, or consolidation or merger by a single transaction of a large number of trust offices and titles of a variety of characters, if the substitution of trustee must be effected as to each trust by pursuing the usual procedure for securing resignations and appointments.
2. The extraordinarily broad power of the legis-

[9]Chicago Title & Trust Co. vs. Zinser 105 N. E. 718.

lature over the entire subject matter of testamentary and intestate succession.

3. Its almost equally broad power over the subject of the creation and regulation of trusts.

4. That the sale and transfer or consolidation or merger of an entire trust department is a very different thing from the transfer of a single trusteeship and such differences justify a diversity in the rules governing such transactions.

5. That a sale or consolidation or merger of an entire trust department can be made only to a corporation in good standing, authorized to exercise trust powers and subject to inspection and supervision by public authority and is a very different thing from the transfer of a single trusteeship to an individual.

6. That banks or trust companies can not be sold, consolidated or merged except under and by virtue of statutory authority so to do.

7. That the statute giving the authority must fix and declare the effect of the transaction of sale, consolidation or merger.

8. That the statute must be enacted by the sovereignty under which the selling and purchasing banks, the consolidating banks or the merging banks, as the case may be, are organized and by virtue of the laws of which they exist.

In conclusion, I may say that in my state, California, there have been a large number of transactions consummated under the laws above referred to and thus far I have never known of an instance where a trustor or beneficiary objected or attempted to exercise a right to appoint a different trustee from that appointed by operation of law, nor have I known of any case where a court refused to recognize and uphold the changed status of trust offices and trustees resulting from transfers of trusts by operation of law.

CHAIRMAN MCLUCAS: Is there any discussion on Judge Hervey's paper?

JOHN W. CHALFANT (Vice-President, Colonial Trust Company, Pittsburgh, Pa.): Mr. Chairman, perhaps it may be proper for me to say that for a period of about ten years last past, whenever we could my company has urged the insertion in wills and in voluntary trust agreements, the very simple clause to the effect that it is the intention of the testator that, in case of a merger or consolidation, or succeeding mergers or consolidations that the merger or consolidating company should be the executor, or, as the case may be, trustee, or testamentary, guardian or what not, in the particular trust.

National Bank Powers

DELEGATE: Mr. Chairman, the speaker stated that it had been construed that a national bank succeeded to the trust powers and duties of another national bank that might be merged or consolidated. I would like to know by whom such construction had been given.

JUDGE HERVEY: I did not state that such construction had been given, there is no Act of Congress which gives a bank the obligation of assuming the liabilities of a trust business that is being consolidated. The trend of discussion seems to indicate that such power does not exist unless given by the Statute. The Massachusetts Case, the Commonwealth against Bank, in Massachusetts, involves that very question, but there is an opinion abroad that it is not a well-reasoned case, and if the question is brought before the Supreme Court of the United States, there is no reason to think that the Supreme Court would not as soon follow the courts of New York, Illinois and California, where the weight of authority seems to be, rather than that of a single case, and, moreover, the Comptroller's office has the power to make many rules and regulations and the Comptroller's permission is of great importance in transactions of this kind. It is my personal belief, as I stated in the paper, that the courts will eventually hold the national banks to have the right to take over trust departments, and assume the trust liabilities and obligations.

Right to Hold Stock of Merged Bank

MILES ROBERTS (United States Trust Company, New York, N. Y.): If you considered a case where an executor and trustee is authorized to hold stock held by the testator during his lifetime, and that the company whose stock he held had merged, can the trustee hold the merged stock?

JUDGE HERVEY: That is a very different question from the one I discussed, and it raises some interesting questions, it would take too long to go into it now, I think. The question of whether you can hold non-legal securities is also in our minds, and sometimes there is a difference of opinion between the courts and the trust companies on that subject. If you have, in your trust, a non-legal security, no matter what bank it may be, and you have the right to continue to hold non-legal securities you can hold that security.

MR. ROBERTS: You think you can hold the consolidated security?

JUDGE HERVEY: You have no right to buy the security of your bank, but if you received the security of your bank in a trust, if your law permits you to hold non-legals, you can hold that stock as well as any other. The trend of legislation is to hold non-legals if they are received from estates or by declarations of a trust, so long as in the discretion and good judgment of the trustee it is proper and wise to hold them. We have no such law in my state, but it is before the legislature this year, and, undoubtedly, will be passed. Many states have passed a law permitting the holding of non-legals that were received by a trust company, but not to purchase non-legals. No law, so far as I know, permits the purchase of non-legals.

CHAIRMAN MCLUCAS: Inasmuch as we are getting

off the subject in this last question, I think we shall close this discussion, with your permission.

. . . Secretary Mershon introduced Mrs. Jones, of the Aeolian Company, through whose courtesy the convention was entertained with selections on the Steinway Duo-Art piano.

CHAIRMAN MCLUCAS: The next subject, "Trust Companies Through the Testator's Eyes," will be presented by Gilbert T. Stephenson, Vice-President of the Wachovia Bank and Trust Company, of Raleigh, North Carolina. Judge Stephenson is the author of a book with which you are all familiar, a book on "Living Trusts," and many other books of interest to trust company men. Judge Stephenson.

Trust Companies Through the Testator's Eyes

By GILBERT T. STEPHENSON

Vice-President, Wachovia Bank and Trust Company, Raleigh. N. C.

MR. CHAIRMAN, Ladies and Gentlemen: "Trust Companies Through the Testator's Eyes."

"Oh wad some power the giftie gie us
To see oursel's as others see us!
It wad frae monie a blunder free us,
An' foolish notion.——"

Of 92 banks and trust companies with not less than 175 officers and employees actively soliciting trust business, I recently made the inquiry, "What are the questions about wills and trusts and trust companies that your prospects ask?" I received replies from 44 institutions, and in 20 states, representing every section of the country, listing over 600 questions.

The similarity in the questions is marked. People on the Pacific Coast are interested in the same things about wills and trusts and trust companies as people on the Atlantic Coast, and those on the Canadian Border the same as those on the Gulf of Mexico. Furthermore, people are interested in phases of wills and trusts and trust companies that we seldom discuss at our meetings or in our literature.

I have reduced the 600 questions to 100, which, with a brief comment here and there, I offer as the practical questions about wills, trusts and trust companies, that are actually being asked of trust solicitors from Coast to Coast. These one hundred questions are arranged on the leaflet that you have, in the order in which they are naturally asked.

Definition of Terms

1. What do you mean by testator, intestate, *per stirpes, per capita,* dower and curtesy, issue, codicil, residuary estate?

   (And a dozen other technical terms about wills)

2. What is the difference between executor and administrator, executor and trustee, bequest and devise?

These words and phrases are in such common use with trust men that we overlook the fact that the average man does not know their meaning, and that they are apt to create the same consternation in their minds as my family physician, a few years ago, created in mine, when he told me that one of my boys had furunculosis, which, as he later explained to me, meant only that he had common boils on his legs. (Laughter) Let us put our friends at ease by explaining these terms as we go along.

Need of Making a Will

3. At what age should one make a will?
4. Should I make a will if I divide my property among my children before I die?
5. Should I make a will if I intend my wife to have all my property?

Such a man thinks that the law will take the will for the deed.

6. Should I make a will if my wife and I own everything jointly?

He does not realize the difference between joint tenancy and tenancy in common.

7. How will my estate be divided if I do not make a will?
8. Who will settle my estate if I do not make a will?

To show how his estate will be divided and who will settle it if he does not make a will, is usually the strongest argument for making a will and naming a corporate executor.

Selection of Executor and Trustee

9. What are the advantages of a trust company over my wife or son or business associate as executor or trustee?
10. What happens if an individual executor or trustee dies or becomes incapacitated?
11. Is an individual as co-executor or co-trustee acceptable to a trust company?

12. What are the duties and responsibilities of the individual co-executor or co-trustee?
13. In case of disagreement between the trust company and its co-executor or co-trustee, whose decision is final?

Three considerations make men name their wives as co-executor: The first is to compliment them; the second is to give them the benefit of association with business men, and the third is to save commissions, and the least of these is to save commissions.

12. What size of estate does a trust company prefer to handle?

Some men think trust companies seek only large estates, others that their estates are too large for a trust company to handle. They are both mistaken.

Preliminary Steps to Preparation of Will

15. Should I get my business affairs well arranged before I make a will?
16. Should I make an inventory of my estate and mention my property, item by item, in my will?

Some men have a feeling of finality about making a will, they think they must put their house into order before making a will, and keep it so ever after. The fact is that the more disarranged one's business is, the more he needs a will.

Preparation of Will

17. May I draw my own will?
18. What provision does a trust company make for having wills drawn?
19. Why should I have my will drawn by an attorney not connected with the trust company?

To convince a man who does not have a regular attorney, of the wisdom and, from the standpoint of the trust company, of the necessity of having his will drawn by an outside attorney, is a real test of salesmanship.

During Life of Testator

20. Who must know that I have made a will?
21. Must the witnesses know the contents of my will?
22. Who keeps my will after it is made?
23. Does it have to be acknowledged before a notary or filed or recorded?

Men who are used to making and taking deeds think that there are similar formalities of acknowledging, filing and recording wills. To disabuse their minds on this point is to remove another of the barriers to making a will.

24. May it be changed or cancelled during my lifetime?
25. May I continue to deal with my property after I make my will?

These questions also indicate the theory or formality and finality that deter men from making wills.

Distribution of Estate

26. What provision should I make for the immediate needs of my family?

This is the most neglected point in the making of wills. A recent analysis of over 80 well prepared wills, naming trust companies as executors and trustees, reveal that in only 5 of them had provision been made for the needs of the family during the period of administration. In some cases, the family subsists on independent income, and in others, the executor has to provide for the family *vi et armis*.

27. Do I have to treat all my children alike?
28. If I wish to disinherit an heir do I have to mention his name and give him one dollar?
29. May a husband cut out his wife?; a wife her husband?
30. Is there any way to keep my wife from dissenting from my will, and what would she get if she dissented?
31. If she dissents, will that upset my whole will?
32. What provision should I make for my wife (or husband) in case she (or he) remarries?

There seems to be no age limit on this question. (Laughter)

33. Should I leave my wife's part outright to her or in trust for her?
34. What provision should I make for holding my home intact?

There is no more important provision to write into a will than the one covering this point, and yet, one could not tell from most wills whether or not the testator had a home.

35. At what age should my son get his part of my estate?
36. How can I best keep him from running through with what I leave him?
37. May I leave his part of my estate under such terms as will make it an incentive to industry and economy and good habits?
38. May I fix my will so that his share of my estate will not be subject to his debts?
39. Should my daughter get her principal at a certain age or should it be held in trust for her for life?
40. How can I protect her against a spendthrift husband?

In asking these questions, the testator is seeking advice on the fundamentals of wills and trusts, he wants to know his parental duty not his legal rights, and this offers a trust officer his supreme opportunity for service.

41. How can I give my wife and children the full benefit of my estate and yet make sure that it will

stay in my family in case my wife should remarry or my children should die without issue?

42. How long can I tie up my estate for the benefit of my descendants?
43. Should I make my gifts to charity direct or in trust; now or at the end of a life estate for my heirs?

Now, this question strikes close home to us.

Cost of Trust Company Service

44. What are your charges for helping me fix my will?
45. What will the attorney charge me for drawing a will?

Strange to say, men of estate still decline to make wills and die intestate, rather than pay a small fee for having a will drawn properly.

46. What will the trust company charge for settling my estate?
47. How do the charges of a trust company compare with those of an individual executor or trustee?
48. If I name a co-executor or co-trustee, are the commissions divided?

In my experience, I do not recall an instance in which I thought the prime motive of a testator in naming an individual co-executor was to split the commissions. Our company welcomes the wife or son as co-executor, but makes it plain that the commissions will not be split.

49. In case of litigation over my estate who would fix and pay the attorneys' fees?
50. Are there any extra charges in connection with settling an estate?

There is a feeling among some men that while the commissions allowed a trust company as executor or trustee are reasonable enough, the estate will be loaded with "extras." The only answer to such suspicion is, "Come and see."

51. Does a trust company make any profit in addition to its commissions out of handling an estate?

This question is a carry-over from the day when some trust companies charged a commission or bonus on trust funds loaned.

52. Does a trust company immediately convert assets into cash, pay the debts, and settle the estate, even at a sacrifice, in order to get its commissions?
53. Does a trust company ever delay the settlement of an estate in order to make further profits out of handling the funds?
54. Does a trust company take commissions on the sales of real estate?; on the re-investment of funds?

To explain to a testator the basis on which commissions are figured is to remove another doubt, often unexpressed, that deters him from making a will.

55. Does a trust company pay rent agents commissions for collecting rent on real estate and take commissions on the rent collected?
56. When does the trust company receive its compensation?
57. Will a trust company make a definite contract about compensation?

Our company has a definite schedule with graduated rates for all its major trust services, which has worked with much satisfaction.

Business Management by Trust Company

58. How can a trust company carry on a business and keep it intact for a child or grandchild?
59. In what way does it supply technical knowledge required in carrying on a business?
60. To what extent does a trust company keep in touch, by having representation on their boards, with companies in which it has stock?
61. Can a trust company as executor and trustee borrow money on the credit of an estate to finance a business owned by the estate?

In comparatively few wills, is the executor, as distinguished from a trustee, given ample power to finance and carry on business enterprises during the year or years required to settle the estate.

62. How can a trust company advantageously handle property at a distance?

This question applies only to trust companies aspiring to do state-wide or nation-wide business.

Investment Policy of Trust Company

63. What is the policy of a trust company as to selling immediately or holding for more favorable prices properties taken over?

The power to retain original investments pending a favorable market should be clearly set forth in the will.

64. Does a trust company purchase trust investments from its own bond department or securities company?
65. Should a trust company be limited to legal investments?
66. If it is not so limited, what kind of investments does it actually make?
67. What plan has it for selecting and reviewing its trust investments?

A trust company that has not a well considered plan, consistently followed, is, of course, not worthy of the name. Acquainting the public with the plan is one of the best arguments for corporate trust service.

Income from Trust Estates

68. What rate of income does a trust company earn on trust funds?
69. How often does it make payments of income to the beneficiaries?
70. Does it guarantee a certain rate of income?

The one who asks this question usually has in mind the rate guaranteed by life insurance companies, and in answering it, the trust company representative must be careful to explain the difference between the income earned by a life insurance company and that earned by a trust company, without prejudice to the case of either.

71. To what extent does it permit anticipation of income?

72. How does it meet the living expenses of the beneficiaries in case of temporary failure of income?

Safety of Trust Company Administration

73. What effect would the failure of the trust company have upon the estate or trust?
74. Is a trust company required to give bond to protect its trust assets?
75. Does it guarantee the principal of its trust investments?
76. If it makes a bad investment, who stands the loss?
77. To what extent does it keep its bank resources and trust assets separate?
78. What guarantee has one of the faithful performance by the officers and employees of a trust company of their duties in connection with estates?

The asking of a question sometimes crystallizes a doubt. It is well, therefore, to anticipate the question and answer it without waiting for it ever to be formulated into words.

Permanency of Trust Company Administration

79. If a trust company should go out of business, what would become of the estates and trusts it held?

The frequent mergers and consolidations give rise to this question. You can see that Judge Hervey, this morning, was really discussing an interesting question from the testator's standpoint.

80. Who would name a successor executor or trustee?
81. What assurance has one that the present policies of a trust company will be continued after the present executives are gone?

This is the question that addresses itself primarily to boards of directors.

82. Can one by his will give his wife power to terminate a trust or to change trustees in case the one named is not satisfactory to her?

Personal Element in Trust Service

83. What assurance has one that the present trust officers will be succeeded by men who inspire equal confidence in the administration of trusts?

There is an element of flattery in this question, but then, too, there is genuine concern as to the characteristics of the trust officer who is to deal with and handle the affairs of loved ones. It deserves a serious answer.

84. To what extent is the handling of estates and trusts turned over to subordinates?

The appearance of having "office boy" administration is a thing against which metropolitan trust companies, particularly, must be on guard.

85. How does a trust company deal with such personal matters as living expenses, discipline and schooling?
86. If one names a trustee for his children, does he need to name a guardian also?

Discretionary Powers

87. Who exercises the discretionary powers of a trust company as trustee as to paying over or withholding principal?; as to anticipating or accumulating income?

The fear of "office boy" administration also gives rise to this question.

88. Will a trust company be strict or liberal in the exercise of such discretionary powers?

As a young lawyer, I was assigned to defend a negro charged with murder. The killing was admitted, the plea was self defense; it was important to ascertain whether the negro went to the house where the crime was committed with malice aforethought, prepared to kill, which, of course, would make it murder in the first degree; or whether he went there unarmed, got into a quarrel and, in the heat of passion, grabbed a pistol that was on the table and shot his antagonist in self defense.

A few days before the trial, I went to the jail and told Dave that it was important for me to know whether he had his pistol in his pocket when he went to the house, or whether he found it on the table in the room. Dave looked at me, straight in the eye, and said, "Mr. Stephenson, where does you want that pistol to be?" (Laughter)

Whenever a testator asks me whether our trust company will be strict or liberal in the exercise of its discretionary powers, I am disposed to counter by asking, "How do you want us to be?"

89. What protection is there against the abuse of such discretion?
90. Is it feasible to require the trustee to consult with a named individual, as my wife, before exercising such discretion?
91. May one leave his estate in trust for his wife and still give her the right at her pleasure to call for the principal in whole or in part?

Inheritance Taxes

92. What are the different taxes that are levied against one's estate at his death?
93. What will be the amount of these taxes for an estate of a given size and kind?

94. What can one do by will to avoid or lesson such taxes?

Every trust officer should be or else should have easy access to a tax expert.

Life Insurance

95. What has an executor to do with life insurance payable to my wife or other named beneficiary?
96. To what extent should my life insurance be made payable to my estate?
97. May I in my will make a trust fund of my life insurance?

There is so much lappage, as was brought out two or three times yesterday, between life insurance and trust business that life underwriters and trust men should have a working knowledge of the service of each other.

Settlement of Estates

98. How long does it take to settle an estate?
99. How often and to whom does a trust company have to render accounts?
100. What rights have the beneficiaries as to inspecting the books of the trust company?

An ungrudging open-door policy to those who have a right to enter and see for themselves removes barriers of prejudice and makes friends for trust companies.

Many of these are not orthodox trust questions, that is, they are not suppositious questions that we trust men sometimes ask and, having asked, proceed to answer to the great advantage of the trust company. Instead, they are questions that men and women who are interested in making wills and naming trust companies executors and trustees are asking the country over of us who solicit trust business. They call forth the information sought by people who are not lawyers or trust officers. Satisfactory answers to these questions—and everyone of them can be answered to the satisfaction of fair-minded men—will greatly popularize corporate trust service.

While I am not a member of our Committee on Publicity, and hold no brief for it, I declare, nevertheless, that it was unfortunate for the trust companies of the United States not to have given sufficient financial support to the Committee to enable it to continue the national publicity campaign so admirably launched and carried on a few years ago, and even now I submit the 2700 trust companies could not do better for themselves than to reconsider and make it possible for the Committee to carry on, year after year, a national campaign of education, that will meet ignorance, indifference, prejudice and even hostility to trust company service on its own ground by answering practical questions of those who should make wills and create trusts.

Do you remember the story of Lorna Doone? The Doones, who were men of high family, having fallen under the displeasure of the government, had betaken themselves to the Doone Glen in southern England, which was surrounded by precipitous cliffs; the men of Devon gathered on the western cliff, and those of Somerset on the eastern cliff, both representing the government. The Devon men trained their cannon on a level with and fired point blank into the ranks of their cousins of Somerset on the eastern cliffs, instead of training them down into the glen on a level with the Doones. The Somerset men fired back on the same level; the battle raged, each side thinking it was reaching the Doones, until the boy cried, "Got the worst of it. Better be off all of you. Somerset and Devon are fighting, and the Doones have drashed 'em both."

Let us remember that the men and women who make wills and create trusts are like the Doones down in the valley, that they are not much interested in the technical subjects that we discuss up here among the cliffs. Let us, therefore, in our public statements and literature train our guns at least a little lower, so as to reach our friends down in the valley, that is, let us take heed that we see trust companies through the testator's eyes, that we talk trust business in the testator's language, and that we conceive of trust service, first and always, in the terms of the testator's needs.

CHAIRMAN MCLUCAS: I am sure Judge Stephenson has presented this subject so clearly that we may pass discussion. We are late, and we would like to finish this morning's program as set up.

The next subject, "The Market for Corporate Fiduciary Services" will be presented by Mr. James G. Smith, Instructor in Charge of Statistics, Princeton University. May we hear from Mr. Smith?

The Market for Corporate Fiduciary Services

By JAMES G. SMITH

Instructor in Charge of Statistics, Princeton University

MR. CHAIRMAN, Ladies and Gentlemen: Throughout my undergraduate, graduate and teaching days at Princeton University, I have been particularly interested in the subjects of currency and banking and general economic theory. In looking for a subject for a piece of research work a year or two ago, to my great delight I discovered a field of study combining both of these subjects and still virtually untilled by academic research. That is the field of the corporate fiduciary.

Fortunately, during the summer of 1925, I was engaged by a New York publicity firm to do some research work on trust companies. My study began with the construction of a questionnaire to be sent out in the fall of 1925 to most of the trust companies of the United States and to 350 of the national banks granted fiduciary powers under the Federal Reserve Act. Perhaps many of you will remember that questionnaire. In its construction, I owe a debt of gratitude to many trust company officials of New York City, to Mr. Dempsey, of Cowan, Dempsey and Dengler and others; but particularly to the Trust Company Division of the American Bankers Association. For the necessary financing of the undertaking I am indebted to the firm of Cowan, Dempsey and Dengler of New York City and to the Guardian Trust Company, of Detroit, Michigan, neither of whom exacted any promise of special privilege with respect to the returns—it being strictly understood that the individual returns would be entirely confidential and remain in my possession. A copy of the summarized compilation of the returns was sent to the Guardian Trust Company only last month and it is now, for the first time, being made public for the particular benefit of those who replied to the questionnaire and for the benefit of corporate fiduciaries in general.

Meaning of Word "Market"

THE subject of my paper, The Market for Corporate Fiduciary Services, may perhaps need a little explanation. Market originally meant a place at the boundary line between tribes where strangers met to trade. It still retains this meaning of a place where things are traded; but it also now has a broader meaning. With the development of transportation, rapid communication and modern advertising and merchandising methods we speak of the market for wheat, or the market for cotton, etc., having in mind world-wide conditions with respect to that commodity. When speaking of the market of a commodity we think of the physical and psychological forces underlying the supply and demand of that commodity, as indicated on this chart:

The Market

for

Corporate Fiduciary Services

Demand Side	Supply Side
The wealth demanding the service	The corporate fiduciaries offering the service
Distribution of wealth	Investment of trust funds

Forces Operating to Bring Supply and Demand Together

Education of the Public
Selling Methods
Profits

In so brief a paper it is of course impossible to discuss all of these forces. Only those illustrated by the results of the trust company questionnaire of the fall of 1925 will be touched upon.

I. Representative Character of Returns

RETURNS from these questionnaires were received from 334 trust companies and 57 national banks and were most representative; geographically (only two states—New Mexico and Nevada not being heard from); representative with respect to age—both old and young institutions being included; and representative as regards size—both large and small corporate fiduciaries replying.

II. The Potential Demand for Corporate Fiduciary Services

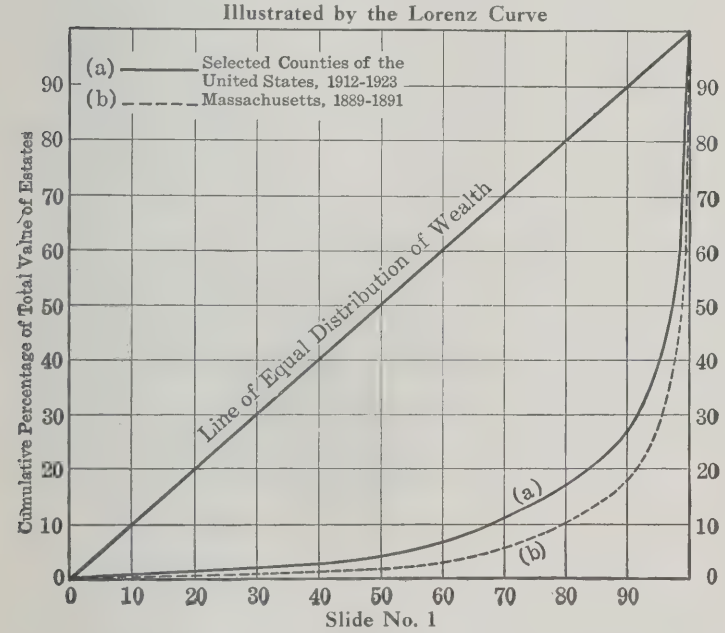
THE potential demand for personal trust services of corporate fiduciaries consists of the aggregate of individual estates, each of which is sufficiently large to warrant the payment of a fee for handling its investment,

leaving a large enough margin of advantage to its owner to furnish the motive for forming a trust. In other words the demand for corporate fiduciary service depends upon the size of the estate and in the aggregate on the distribution of wealth.

The major part of my paper is to be accompanied by slides. (Plates furnished by courtesy of Henry Holt & Co., New York, publishers of "The Development of Trust Companies in the United States," a forthcoming book by Mr. Smith.)

Distribution of Wealth

Illustrated by the Lorenz Curve


(a) Selected Counties of the United States, 1912-1923
(b) Massachusetts, 1889-1891
Line of Equal Distribution of Wealth
(a)
(b)
Cumulative Percentage of Total Value of Estates
0 10 20 30 40 50 60 70 80 90

Slide No. 1

The vertical scale represents the accumulated percentage runing from zero to 100%, which is the accumulated percentage of the total number of estates, in other words, of the population. The horizontal scale represents the accumulated percentage of the amount of wealth represented by the given amount of population, thus, if you had a perfectly equal distribution of wealth, 10% of the population would own 10%, 20% would own 20%, and so on, so that the straight diagonal line on the graph represents the equal distribution of wealth.

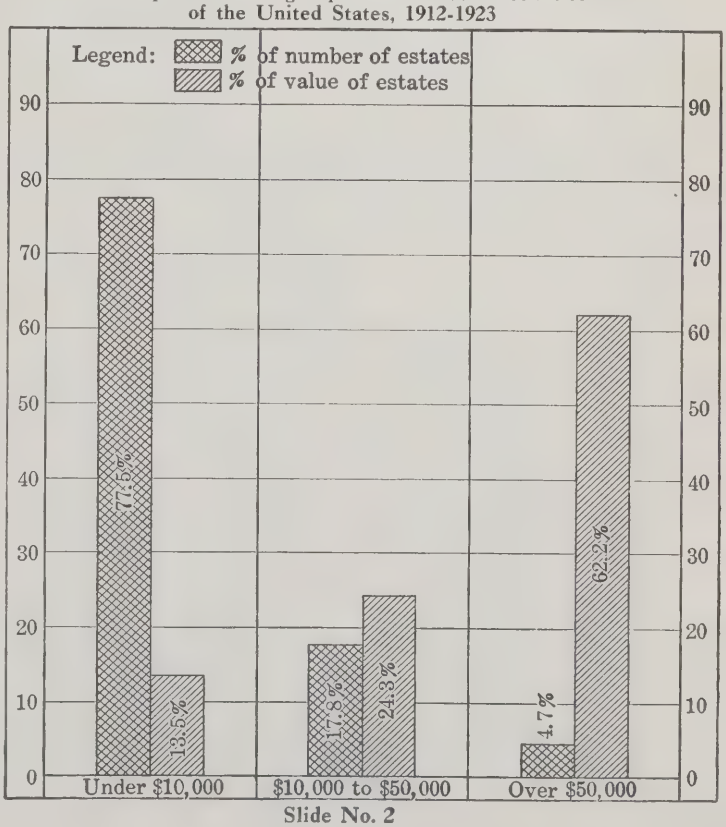
The line labelled (a) shows the actual distribution of wealth as indicated by the studies of probate records recently made by the Federal Trade Commission and published under the title "National Wealth and Income." This study includes 43,512 estates probated in twelve states located in various parts of the United States and the District of Columbia. Counties were selected so as to give a representative character to the study as between rural, town and city types of population. For each county taken a report on every estate probated in the 12-year period 1912-1923, inclusive, was made. In this study figures are presented also which represent a study of probate records contained in the twenty-fifth annual report of the Massachusetts Bureau of Labor, including estates probated in 1829-31, 1859-61, 1879-81 and 1889-91.

This distribution of wealth "among the dead," so to speak, has very distinct limitations so far as giving a picture of distribution of wealth "among the living" is concerned. There are no statistics giving the distribution of wealth among the living. Dr. Willford I. King of the National Bureau of Economic Research in an address before the annual meeting of the American Statistical Association in December, estimated the distribution of wealth among the living. His results indicate a somewhat more equable distribution of wealth among the living than is here shown to be the distribution of wealth among the dead. Another interesting thing about this picture is that the distribution of wealth among the estates probated is more equable for the recent period than for the earlier period, indicating a historical tendency towards a broader distribution of wealth.

Slide 2 presents the same information in a different form. It is likewise on a vertical scale running from 0 to 100%. Here it is shown that the aggregate of all estates over $50,000 constitutes 62.2% of the total wealth, and that this wealth is owned by 4.7% of the population. The aggregate of all estates from $10,000 to $50,000 constitutes 24.3% of the total wealth, and that 24.3% is

Percentage of Total Number and Total Value of Probated Estates

For specified size groups in 24 selected counties of the United States, 1912-1923



Slide No. 2

owned by 17.8% of the population. While the aggregate of all estates under $10,000 constitutes only 13.5% of the total wealth, and is owned by 77.5% of the population. In other words, in order to cover 62.2% of the potential demand for corporate fiduciary services only 4.7% of the population needs to be educated; in order to cover the next 24.3% of the potential demand, 17.8% of the population needs to be educated; while to cover that last 13.5% it requires the education of 77.5%. By educating 22.5% of the population, 86.5% of the potential demand is covered for corporate fiduciary service.

In this connection, corporate fiduciaries are to be looked upon as conservators of private property and stabilizers of enterprise, and one of the most effective ways in which they can accomplish those ends is by the thorough education of that 77.5% of the population which has only 13.5% of the wealth of the country. By such people, if they regard the activities of financial institutions as something of a mystery, the social and political services of the corporate fiduciary for the wealthy property holder will be looked upon with suspicion. The old social outcry against the "money trust" and costly public investigations result from such suspicion, and sympathy for inheritance tax and other property tax reform is lost. From the point of view of the healthy development of the corporate fiduciary in a democratic society, it should avoid so far as possible the growth of the notion that the corporate fiduciary is "the rich man's bank."

In the light of this situation, pro and con, how small a trust fund should a corporate fiduciary seek or desire?

This is the first question which appeared on the trust company questionnaire:

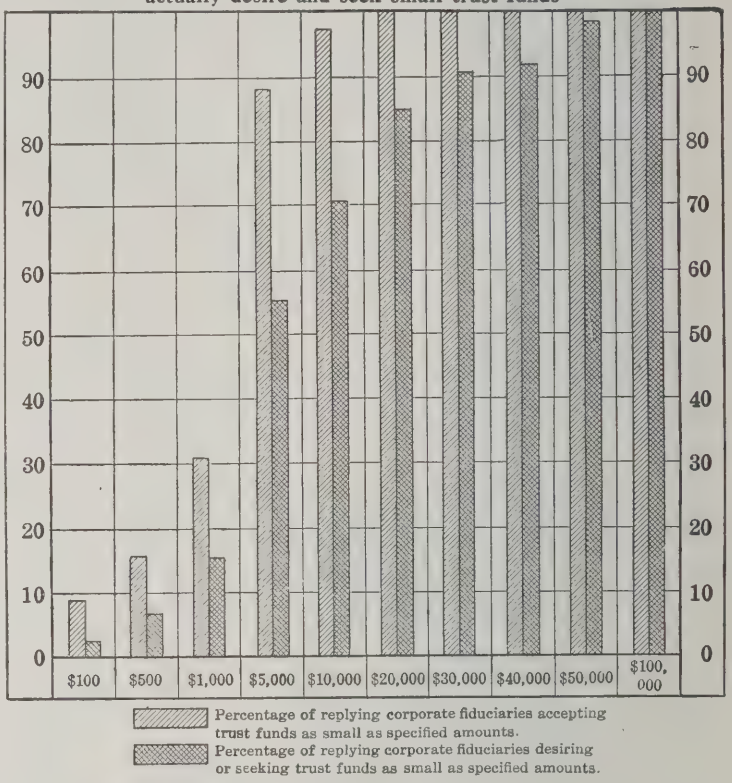
Question I—Size of smallest acceptable and of smallest desirable trust fund?

Amount	(1) How Small a Trust Fund Are You Willing to Accept	(2) How Small a Trust Fund Do You Actually Desire or Seek
$100,000		
90,000		
80,000		
70,000		
60,000		
50,000		
40,000		
30,000		
20,000		
10,000		
5,000		

Slide No. 3

Proportion of Corporate Fiduciaries Accepting Small Trust Funds

Compared with the proportion of corporate fiduciaries that actually desire and seek small trust funds



Slide No. 4

Slide 4 presents the summary of replies to this question of the questionnaire, and shows what in practice is the attitude of corporate fiduciaries to this problem. On this graph, the heights of the bars represent 100% of the trust companies replying, and at the base of each pair of bars, the size of the trust fund is indicated. Beginning the examination of this chart at the right, trust funds as small as $100,000 are not only accepted, but they are sought by 100% of the corporate fiduciaries which replied. Trust funds as small as $50,000 were accepted by all the trust companies, but a very small percentage of the trust companies do not desire or seek them. When it comes to trust funds as small as $40,000 the percentage of trust companies actually desiring or seeking such trusts declines, and so on, $30,000, $20,000, $10,000.

The percentage of corporate fiduciaries actually desiring or seeking trust funds below $10,000 declines rapidly. Furthermore, a considerable proportion of corporate fiduciaries refuse to accept trust funds as small as $10,000, and that proportion increases as the size of the fund grows smaller, until finally in the case of funds as small as $100, there is a very small percentage of corporate fiduciaries actually desiring or seeking trust funds as small as that, and less than ten per cent of the corporate fiduciaries that will actually accept trust funds as small as $100. It is interesting, in the examination of individ-

ual returns, to find that those willing to accept trust funds as small as $100 were not, as you might expect, the small trust companies; they ranged in size from one with total assets of $1,000,000 to one with total assets of over $200,000,000.

Some comments made by corporate fiduciaries on this question are interesting: One said, "Have one as low as $7.00." Another said, "Feel that a trust company is a quasi-public institution." Another, "Have accepted as low as $5.00, in connection with others." Another, "Expect a minimum annual fee of $25.00." Another, "All trusts have an advertising value. Many trusts are given to us by court order and we cannot very well reject the small ones and expect to get large ones."

Another question was "What factors, in your opinion, have been chiefly responsible for the rapid growth of trust company business in the last decade?" Slide 5 summarizes the ten fundamental factors repeated in various ways by the different replies to this question.

Factors Responsible for the Rapid Growth of Corporate Fiduciaries

1. Industrial and commercial development of the country.
2. Increase of individual wealth and a wider distribution of wealth.
3. Increased complexity in personal investment problems.
4. Increasing general knowledge of fiduciary service.
5. Changing policies of the officials of financial institutions.
6. Broad scope of financial service available.
7. Advantages of corporate fiduciary over the individual.
8. Perfection of internal organization.
9. Reputation for service at low cost.
10. Cooperation of attorneys and other affiliations.

Slide No. 5

Additional comments in regard to the above factors were as follows:

1. Greater complexity of business. Corporation development—modern business requires specialists.

2. Life insurance, wider distribution of securities.

3. Tax laws, federal and state, increasing complexity of financial structure of business.

4. The Trust Company Division publicity campaign, reputation for service, personal solicitation.

5. Accessibility of officials. Personal solicitation by officials. Humanness of institutions increasing. New methods of financing.

6. Banking facilities, trust department, corporate and personal, real estate department, investments, safe deposit, etc.

7. Desire for organized financial ability. Poor record of individuals as fiduciaries. Continued existence, skilled service, expert knowledge as to investments, etc.

8. Accuracy, permanent, secure and efficient accounting. Institutions of modern equipment. Standardization of methods.

9. Reasonable charges. Economy. The large fees charged by individuals as fiduciaries. Good returns on trust investments.

10. We believe that cooperation with the attorneys and prompt and careful services have been our greatest assets. The reference of all legal questions to reliable attorneys. The reluctance of good lawyers to act as guardians and trustees.

III. The Potential Supply of Corporate Fiduciary Services

ESSENTIALLY the service which corporate fiduciaries have to offer is an investment service—the investment of trust funds. So the question was asked on the trust company questionnaire:

Question II—How are trust funds invested?

Type of Investment	(1) Discretionary Trusts (*Where the trustee is not limited to "legal" investments*) The Proportion or Part of Total Discretionary Trust Funds Invested In—	(2) Legal Trusts (*Where the trustee is limited to "legal" investments*) The Proportion or Part of Total Legal Trust Funds Invested In—
(a) Government Bonds		
(b) Municipal Bonds		
(c) Real Estate or Mortgages		
(d) Railroad Bonds		
(e) Industrial Bonds		
(f) Railroad Stock		
(g) Industrial Stock		
(h) Public Utility Securities		
(i) Bank & Insurance Stocks		
(j) Foreign Bonds		
(k) Investment Trust Certificates		
(l)		
(m)		
(n)		

Slide No. 6

A large number of the corporate fiduciaries said it was difficult to answer this question because the proportion invested in the various types of securities depends upon several considerations varying from one case to another:

1. The size of the trust fund.
2. The individual requirements of each particular case as to needs of life beneficiary and remainderman and other specific terms of trust.
3. The condition of the market.
4. The investments made legal in the particular jurisdiction.
5. The contents of the trust property when handed over to the trustee.

However, a considerable number of replies were received and the results were averaged and are shown in Slide 7.

It is noted that there is not much variation in practice as between legal trust funds and discretionary trust funds. These results are presented by a graph in Slide 8.

Average Diversification in Investment by National Banks and Trust Companies

Types of Investment	Estimated average proportion of trust funds invested by corporate fiduciaries in specified securities. Legal Trust Funds %	Discretionary Trust Funds %
Government Bonds	17.3	12.8
Municipal Bonds	11.9	9.1
Real Estate, Mortgages, or Real Estates Bonds	57.0	56.7
Railroad Bonds	3.7	4.6
Industrial Bonds	1.1	4.5
Railroad Stock	1.3	.7
Industrial Stock	1.7	2.6
Public Utility Securities	3.7	5.4
Bank and Insurance Stocks	1.1	1.4
Foreign Bonds	.1	.5
Investment Trust Certificates	.2	1.1
Savings Deposits	.9	.6
Total	100.0%	100.0%

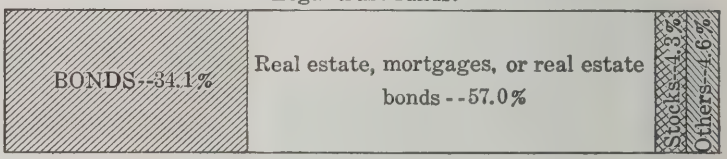
* The actual average in each case is weighted by the number of corporate fiduciaries reporting—thus the actual average for government bonds is 31.3%, but the weighted average is as above, 17.3%.

Slide No. 7

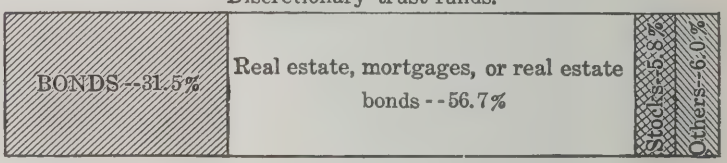
Average Diversification in Investment by Corporate Fiduciaries

(Stock Includes Investment Trust Certificates.)

Legal trust funds.



Discretionary trust funds.

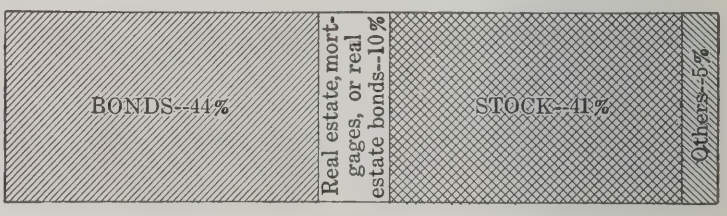


Slide No. 8

Of interest also are some of the reports of individual corporate fiduciaries, presented, anonymously. Slide 9 shows the diversification of investment as practiced by one large corporate fiduciary with respect to one big trust said to be representative of the department. Note the large percentage in stocks.

Diversification in Investment of One Large Trust

Representative of the Trust Department of a Large Ohio Trust Company



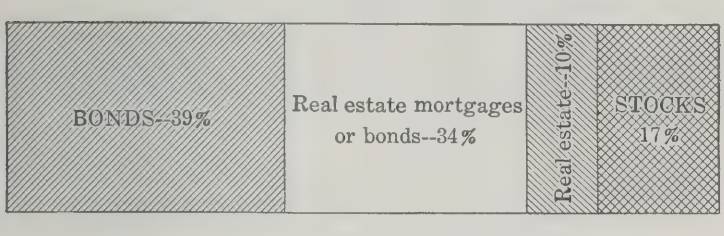
BONDS: Government 11%, municipal 7%, railroad 3%, industrial 23%. Total 44%.
STOCKS: Railroad 1%, industrial 39%, bank and insurance 1%. Total 41%.

Slide No. 9

Slide 10 shows the actual average diversification of all trust funds of one of the largest and oldest corporate fiduciaries of the United States.

Diversification of Investment as Practiced by One of the Oldest and Largest Corporate Fiduciaries of the United States

Legal and Discretionary Trust Funds



BONDS: Government 4%, municipal 6%, Railroad 12%, industrial 4%, public utility 13%. Total 39%.
STOCKS: Railroad 4.5%, industrial 4%, public utility 2%, bank and insurance 4.5%, guaranteed traction 2%. Total 17%.

Slide No. 10

Slide 11 is a picture of the first question which appeared on the personal investment experience questionnaire which was sent to a sample group of investors in one of the largest cities of the United States. Of these there were 65 replies and among these there were:

12 millionnaires
14 well-to-do, but not millionnaires.
9 highly paid executives.
12 executives earning from $5,000 to $10,000.
18 professional men (doctors, lawyers, etc.).

Slide 12 shows the results of this question, presenting in graph form the average diversification of investment as practiced by sample groups of individuals.

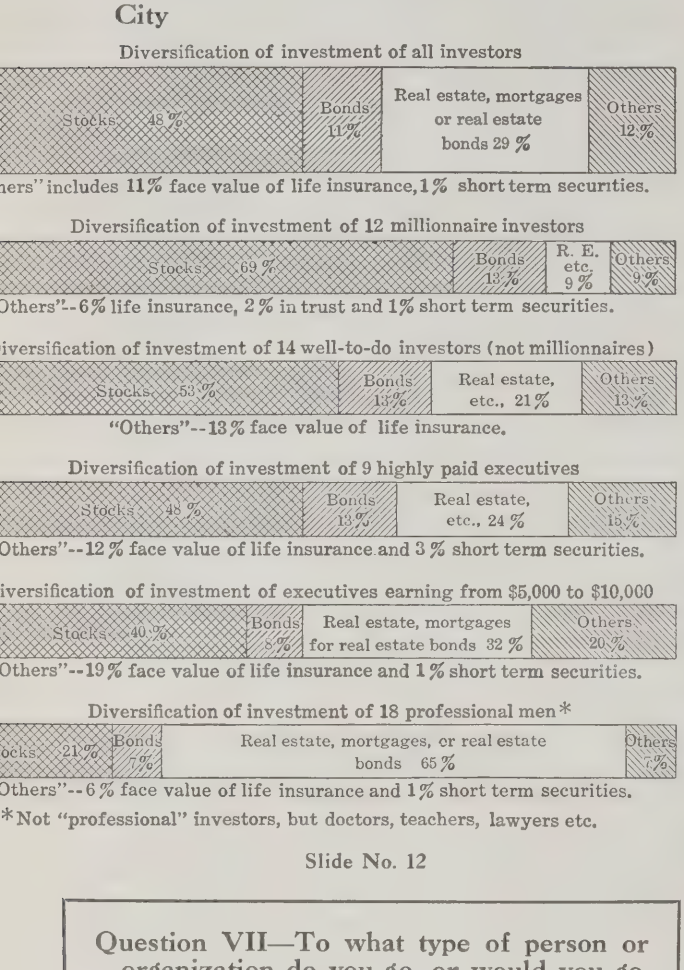
It is very instructive to note the striking difference in respect to relative holdings of stocks and bonds as between corporate fiduciaries and individuals. The average diversification of investment between the equity type of security and the contractual type of security by a sample group of individuals investors presumably represents how a "prudent investor" will distribute his funds when the motive is his own profit and the funds are his own property. Authorities on the law of trusts hold that the trustee shall make his investment of funds held in trust accord with that of a "prudent investor" on behalf of the beneficiary; but the specific limitations of the law force the fiduciary to depart from the policy of a "prudent investor" to a degree here reflected or manifested by the actual difference in practice between investment policy of individuals and that of corporate fiduciaries. In fact the practice of corporate fiduciaries with respect to diversification between stocks and bonds as shown by these returns is very nearly the opposite from that of individuals seeking their own interest.

Question I—What Is the Distribution of Your Investment List and What Is Your Experience and Opinion as to Investment Practice?

Type of Security or Investment	A	B		C	D
	Approximately what percentage of your total wealth is invested in each of the following types of security?	If you inherited money at the present time what percentage would you put in each? (1) Inheritance $250,000	If you inherited money at the present time what percentage would you put in each? (2) Inheritance $2,000,000	Suppose you believed that for the next five years we would have a period of rising prices what percentage would you have in each?	Suppose you believed that for the next five years we would have a period of falling prices what percentage would you have in each?
1. Common Stocks					
2. Preferred Stocks					
3. Industrial and Railroad Bonds					
4. Government Bonds					
5. Municipal Bonds					
6. Foreign Government Bonds					
7. Bank and Insurance Shares					
8. Investment Trust Certificates					
9. Real Estate or Mortgages					
10. Life Insurance Policy (face value)					
11. Funds in Trust					
12. Short-term Notes					
13. (Specify Others)					
14.					

Slide No. 11

Diversification of Investment as Practiced by Sample Groups of Individuals of a Large City


Diversification of investment of all investors
Stocks 48%
Bonds 11%
Real estate, mortgages or real estate bonds 29 %
Others 12%
hers" includes 11% face value of life insurance, 1% short term securities.
Diversification of investment of 12 millionnaire investors
Stocks 69 %
Bonds 13 %
R. E. etc 9 %
Others 9%
Others"--6% life insurance, 2 % in trust and 1% short term securities.
iversification of investment of 14 well-to-do investors (not millionnaires)
Stocks 53 %
Bonds 13%
Real estate, etc., 21%
Others 13%
"Others"--13% face value of life insurance.
Diversification of investment of 9 highly paid executives
Stocks 48 %
Bonds 13%
Real estate, etc., 24 %
Others 15%
Others"--12 % face value of life insurance and 3 % short term securities.
iversification of investment of executives earning from $5,000 to $10,000
Stocks 40 %
Bonds 8%
Real estate, mortgages for real estate bonds 32 %
Others 20%
Others"--19% face value of life insurance and 1% short term securities.
Diversification of investment of 18 professional men*
ocks 21%
Bonds 7%
Real estate, mortgages, or real estate bonds 65 %
Others 7%
Others"--6 % face value of life insurance and 1% short term securities.
*Not "professional" investors, but doctors, teachers, lawyers etc.

Slide No. 12

Question VII—To what type of person or organization do you go, or would you go, to do the following things:

(a) To buy or sell securities_____

(b) To obtain financial advice_____

(c) To lay aside a fund for your own future use

_____

(d) To lay aside a fund for some specific purpose

_____

(e) To write a will_____

(f) To appoint an executor_____

(g) To buy or sell real estate_____

(h) To buy or sell mortgages_____

(i) To put some money where it will bring a large return_____

(j) To arrange for family allowances while you are alive

_____

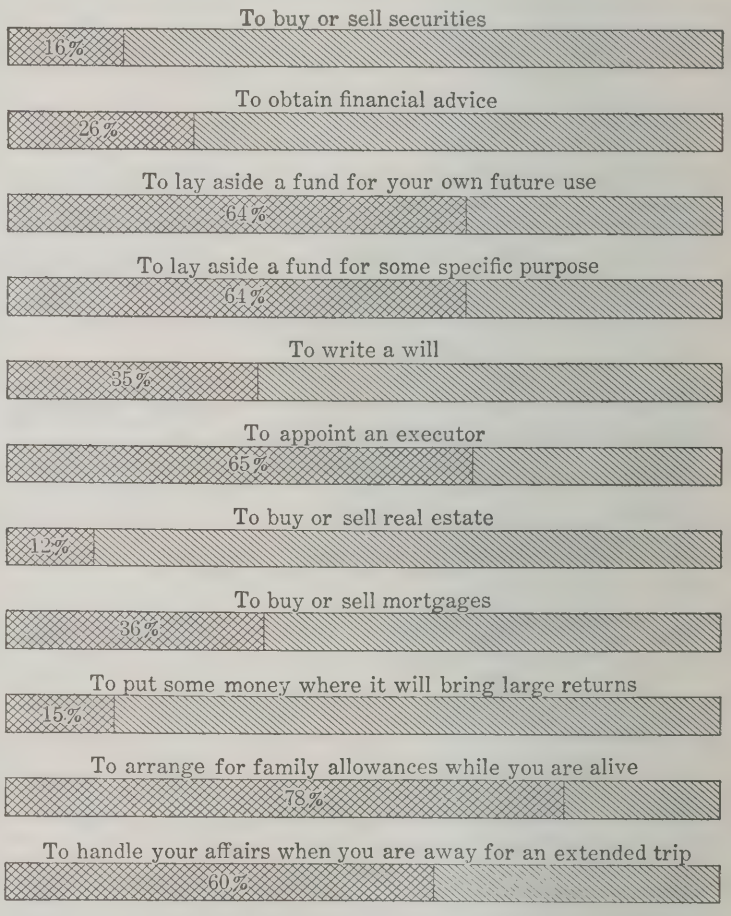
(k) To handle your affairs when you are away for an extended trip_____

Slide No. 13

IV. Factors Bringing Together Potential Demand and Potential Supply

SELLING corporate fiduciaries services is very largely a matter of educating the public as to what those services are, and in order to test the general knowledge of corporate fiduciary services on the part of the investing public, question VII was asked on the personal investment experience questionnaire.

Popularity of Corporate Fiduciaries for Various Types of Financial Services


To buy or sell securities
16%
To obtain financial advice
26%
To lay aside a fund for your own future use
64%
To lay aside a fund for some specific purpose
61%
To write a will
35%
To appoint an executor
65%
To buy or sell real estate
12%
To buy or sell mortgages
36%
To put some money where it will bring large returns
15%
To arrange for family allowances while you are alive
78%
To handle your affairs when you are away for an extended trip
60%

Slide No. 14

Slide 14 presents a graph showing the extent to which these investors would go to a corporate fiduciary for the services indicated.

The reply to the question "To what type of person or organization do you go, or would you go, to write a will?", indicating that 35% would go to a trust company, is an index of the fact that the publicity of corporate fiduciaries is increasing the business of the lawyers; because when such people go to the trust company for that purpose, the corporate fiduciary either calls upon a lawyer for the purpose or arranges to have the client get into touch with his own lawyer.

On the trust company questionnaire, the question was asked "Does the public have a proper understanding of the nature of a trust company's services?", to which 75% of the corporate fiduciaries replied that they do not.

Following are comments on the question:

"The general public must be educated to regard the preparation of a will as necessary as they have come to regard life insurance and with the same disassociation with the idea of death."

"The public regards the trust company merely as a bank. Other services are learned by experience but very slowly through the printed word. Technical and abstract ideas register poorly."

"Average man or woman of intelligence and education cannot help but know that trust companies furnish and feature facilities and services other than banking if they read the newspapers and magazines."

In order to get an idea of what the investing public thinks of corporate fiduciaries, another question was asked on the personal investment experience questionnaire: "Do you think such a service (investment advice) should be performed by a responsible financial institution, say a trust company?" Of 45 replies, 34 said "Yes," and some comments instructive to corporate fiduciaries were received:

"Yes, in the case of large estates."

"Yes. The average person is a poor judge of investments—good trust company officials are dumb but safe."

The question was then asked: Would you prefer to have this advice come from a special organization for that purpose alone, rather than from a trust company? The majority said they would prefer the trust company. I shall read some of the comments:

"There would be greater possibility of securing practical tested advice from an organization as a trust company which is actually engaged in investments concerning the whole field."

"Would rather have an organization which is interested in me, like a trust company—*they* can get special service."

The majority of these individuals said they would rather pay for such investment advice—that they were skeptical about anything they got for nothing.

On the trust company questionnaire, there was a question concerning the practice of giving investment advice. The majority of corporate fiduciaries replied that a designated official or officials gave such advice, although some indicate that such advice is given indiscriminately by any of the officers. Only eight replied that it was given through an investment committee, statistical department or other special service department for the purpose.

Only five out of 267 replied that a charge is made for such investment advice. Following are some of the comments made:

"Charge made for cost of investigation when expense is incurred in checking."

"Actual cost of securing data is charged."

"No charge made—we usually sell our bonds."

"No charge made, if we sell our bonds; but ¼% charge on bonds purchased outside, or a minimum of $5."

"Only charge made is as we make profit on securities we sell."

Another, somewhat different point of view, is indicated by the following comments:

"No investment advice given except to our trust beneficiaries."

"Give no investment advice except in cases where we are acting as agent or co-trustee."

"The officers of this institution regard invest-

Question IV—New Business or Promotion Methods.

(In each of the last four columns kindly number in the order of superiority or preference the three or four promotion methods used for each type of service.)

Methods for Expanding	Corporate Trust Services (a)	Personal Trust Services (b)	Bond Department Services (c)	Banking Services (d)
Advertising—Newspaper, Magazine, etc.				
Cooperation of Affiliated Institutions				
Direct Mail				
Personal Solicitation				
Cooperation of Present Customers				
Special Pamphlets				
Cooperation of Stockholders and Directors				
Any Other (.....)				
Any Other (.....)				

Slide No. 15

ment advice as undesirable. We do not solicit customers to come to us for this purpose. If such advice is asked we obtain the customers' own views and if the bonds or stocks they suggest are safe we let them decide. If we consider them unsafe or undesirable we advise against the investment."

Let us now turn to the methods used by corporate fiduciaries for selling services. Question IV was asked on the trust company questionnaire as illustrated in slide 15. The replies to this question for the most part indicated which types of promotion are considered superior or more effective than others.

The returns from that question were compiled, and an index of the popularity of the various types of advertisements was constructed. These will be presented now in succeeding slides.

Index of Relative Effectiveness of Specified Methods of Advertising According to the Judgment of Corporate Fiduciaries

The total of all seven methods is assumed to represent 100% effectiveness, and the percentage effectiveness of each method is calculated on that basis

TYPE OF SERVICE	Specified Methods of Advertising						
	Advertising, newspaper, magazine, &c.	Cooperation of affiliated institutions	Direct Mail	Personal solicitation	Cooperation of present customers	Special pamphlets	Cooperation of stockholders and directors
CORPORATE TRUST SERVICES	14%	7%	15%	22%	17%	7%	18%

Slide No. 16

TYPE OF SERVICE	Specified Methods of Advertising						
	Advertising, newspaper, magazine, &c.	Cooperation of affiliated institutions	Direct Mail	Personal solicitation	Cooperation of present customers	Special pamphlets	Cooperation of stockholders and directors
PERSONAL TRUST SERVICES	17%	3%	20%	19%	16%	13%	12%

Slide No. 17

TYPE OF SERVICE	Specified Methods of Advertising						
	Advertising, newspaper, magazine, &c.	Cooperation of affiliated institutions	Direct Mail	Personal solicitation	Cooperation of present customers	Special pamphlets	Cooperation of stockholders and directors
BOND DEPARTMENT	20%	4%	19%	24%	15%	7%	11%

Slide No. 18

TYPE OF SERVICE	Specified Methods of Advertising						
	Advertising, newspaper, magazine, &c.	Cooperation of affiliated institutions	Direct Mail	Personal solicitation	Cooperation of present customers	Special pamphlets	Cooperation of stockholders and directors
BANKING SERVICES	21%	3%	17%	20%	18%	8%	13%

Slide No. 19

Slide 16 shows in graphic form the relative superiority of the various methods of promoting corporate trust services.

Personal solicitation.....22%
Cooperation of stockholders and directors....18
Cooperation of present customers.....17

Slide 17 shows in graphic form the relative superiority of the various methods of promoting personal trust services.

Direct mail.....20%
Personal solicitation.....19
Newspaper advertising.....17

Slide 18 shows in graphic form the relative superiority of the various methods of promoting bond department services.

Personal solicitation.....24%
Newspaper advertising.....20
Direct mail.....19

Slide 19 shows in graphic form the relative superiority of the various methods of promoting banking services.

Newspaper advertising.....21%
Personal solicitation.....20
Cooperation of present customers.....18

Principles of Corporate Fiduciary Advertising

THERE are two broad fields of work in selling corporate fiduciary services:

I. The general education of the public as to the nature of fiduciary services. In this the best and the most economic results are obtained by COOPERATION, among corporate fiduciaries.

II. The individual work of obtaining clients for a particular institution. In this, of course every corporate fiduciary is looking out for its own interests and there is COMPETITION.

The general educational work has been conducted co-

operatively by the Trust Company Division and the corporate fiduciaries of the country, on a national scale, and also on a smaller scale by trust companies in some cities, such as Denver, New Orleans and Los Angeles.

In their individual competition for business there are three important and fundamental precepts or rules of conduct:

1. Practically all personal trust business as well as corporate trust business requires the cooperation of an attorney, and the attitude of the prospective client's lawyer will have much to do with the client's decision to take or leave trust company services. While lawyers in former days handled the administration end of trusts as well as legal, most of them are now glad to be relieved of the administrative burdens and clerical details. Trust companies, on the other hand, are careful not to encroach upon the prerogatives of the legal profession.

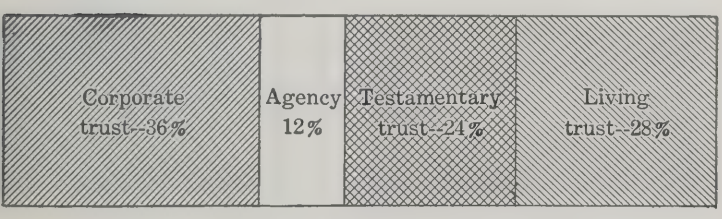
2. One of the greatest unharvested fields of fiduciary service for future expansion is in the field of life insurance. This is being realized as evidenced by the insurance-trust company cooperative movement.

3. Establishment of good will is, by the very nature of the institution, of the utmost importance. Individuals must be deeply impressed with the trustworthiness of the institution, not only in financial matters but in personal matters. This requires a broad knowledge, an alertness, and sensibility on the part of trust company officers, as well as an abundance of patience and good nature.

Profit in Corporate Fiduciary Services

A FEW of the corporate fiduciaries replied to the question with reference to the relative amount of profits obtained from the various types of services. These data were analyzed and the averages are pictured in graphic form on Slide 21. This shows the average proportion of profits from specified fiduciary services compared to total profits from the trust department.

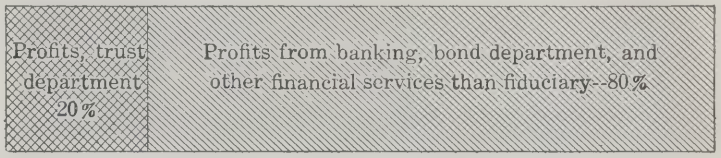
Average Proportion of Profits from Specified Fiduciary Services Compared to Total Profits from Trust Department



Total personal trust 52%.

Slide No. 20

Average Proportion of Profits from Trust Department Compared to Total Profits



Percentage that profits of trust department is of total profits.	Number of Trust Companies
Less than 10%	8
10% and less than 20%	9
20% " " " 30%	1
30% " " " 40%	1
40% " " " 50%	0
50% " " " 60%	1
60% " " " 70%	0
70% " " " 80%	2
80% " " " 90%	1

Total number of trust companies replying.....23

Slide No. 21

The next slide shows the proportion of total profits that are attributable to the trust department. This again is based on the relatively small number of trust companies. Of the total profits of 100%, 20% are attributable to trust departments and 80% to the other branches of financial services. The table shows how many companies realize profits from the trust department of specified proportions.

CHAIRMAN MCLUCAS: The Chair believes you will agree that we are indebted to many of the gentlemen who prepared papers, but that no paper has been more valuable to us than this one, and if we had not been able to get it in any other way than to come to New York, it is worth while to have come.

(Adjournment)

Fourth Session

Thursday Afternoon, February 17, 1927

MR. McLUCAS presiding.

CHAIRMAN MCLUCAS: The first subject this afternoon is "The Taxation of Life Insurance Trusts," to be presented by Mr. Leon Gilbert Simon, Lecturer, New York University, New York.

The Taxation of Life Insurance Trusts

By LEON GILBERT SIMON

Lecturer, New York University, New York, N. Y.

MR. PRESIDENT, Ladies and Gentlemen: In laying the foundation of this brief discussion, I desire to emphasize a few very elementary facts, although I realize you are probably entirely conversant with them.

Very frequently the question arises in the mind of a testator, "Will the proceeds of life insurance policies for the benefit of specific beneficiaries be subject to the inheritance tax." First of all, we are reminded of the fact that the Federal (so-called inheritance) tax is, in reality, an estate tax. That is, the Federal estate tax is imposed upon the entire estate, without regard to beneficiaries. On the other hand, we have an inheritance tax imposed by the state of residence, which is imposed upon the right of beneficiary to inherit. In other words, one in theory is the converse of the other. All states in this country with the execption of three, Alabama, Florida and Nevada, impose an inheritance tax of some kind. The residents of those three states, as well as the residents of the District of Columbia, do not pay any inheritance tax to their respective jurisdictions, but they do pay the full inheritance tax to the Federal government, which is known as the Federal estate tax.

Varying Estate Valuations

VERY often, in valuing an estate, there are two different valuations for the same estate. That seems rather paradoxical. A man leaves a certain unit of wealth; nevertheless, for inheritance tax purposes, the state contends that the net valuation is so much; and in many cases the Federal government contends it is so much more, or, possibly, so much less. To illustrate by a concrete example: A man has an estate valued at $1,000,000 and, in addition, leaves the proceeds of life insurance policies to his wife (a named beneficiary) amounting to $500,000. For inheritance tax purposes, New York State values that estate at $1,000,000 and entirely exempts from its inheritance tax the valuation of the insurance, because the proceeds were payable to a named beneficiary, but the same rule does not hold in regard to the Federal government. It takes, as the valuation, the million dollar estate and adds to that the life insurance proceeds in excess of $40,000, with the result that the Federal government puts a net valuation for tax purposes to the extent of $1,460,000. If that life insurance policy is payable to the estate of the decedent —this is a question that I am sure, will interest you— or to the trustee for the benefit of the estate, New York State, for example, would impose the tax on the full insurance proceeds, on the theory that it becomes a part of the estate, and is, therefore, subject to the inheritance tax of the State of New York.

Position of Federal Government

THE Federal government takes a similar position, and says also that the entire proceeds are subject to tax. Sometime ago, I made the statement in print that if the proceeds of the policies were left to the executor or to the trustee of the estate for the benefit of the estate or if the proceeds were passed by virtue of the will that subsequently the state government and the Federal government would impose the full tax thereon as though it were all payable to the estate. Then this question arose: If a testator, having $40,000 of life insurance provides that said life insurance proceeds shall be payable to the trust company as trustee, and that the proceeds shall be distributed in accordance with the terms of the will, then would not the proceeds be entirely exempt from the Federal estate tax?

In these matters we are guided, a great deal, by practice and the logic of the law. In certain instances, it was assumed that there was a named beneficiary, namely the bank, as trustee, but the policies did not find their final resting place other than through the medium of the will, so that we have an indirect disposition of the proceeds through the medium of the will. In some quarters it was conceived that because of the fact that the policy proceeds did not pass through the estate and that they passed directly to the trustee, only to find their final resting place through the medium of the will, it could not be recognized as estate insurance. There is a very fine legal theory involved, and, possibly, upon litigation, success might finally rest upon the executor and trustee of the estate in defeating the attempt to impose a tax.

A Safer Method

HOWEVER, I believe, as trustees and bank officials, you are not desirous of encountering litigation after your clients pass out of the picture, because litigation of any form means expense, and expense to the estate means depreciation and shrinkage. It is a much safer plan to use this method. Take the life insurance policies and make them payable to the bank or trust company as trustee for the specific benefit of certain beneficiaries, all mentioned and contained within the definition of the policy. We know, as a matter of absolute ruling that under those conditions it is not subject to the state inheritance tax and the Federal estate tax exempts $40,000. That point has been quite definitely fixed.

This is also a new practice in this particular line of thought. You may make your life insurance policies payable to your trust company as trustee and also con-

tinue the phraseology in the life insurance policy that it is to be distributed in accordance with a specific trust agreement, bearing such and such a date.

Of course, if the specific insurance trust contract provides that the trustee take the proceeds as such and invest them for the benefit of designated beneficiaries, keeping them entirely outside of the realm of the estate, it has been held that such proceeds shall be exempt, in the same manner and the same proportion as though all the proceeds were payable to the designated beneficiaries. In other words, the logical theory, is that the mere provision of a trustee to take care of the proceeds for a beneficiary does not eliminate the benefit of the exemption and, if a $100,000 life insurance policy was so interlocked with a specific agreement outside the estate for Federal tax purposes it has the exemption of $40,000. The balance is subject to tax by the state government. With a few exceptions the entire amount is exempt from taxation.

The first question caused a great deal of consternation elsewhere, because it had been contended that, since the policies were payable to the trustee and then distributed to beneficiaries mentioned in the will, it must be interpreted as policies payable to the beneficiaries. However, that contention finds no apparent support in tax circles and the statement is absolutely made that, as far as the legal practice is concerned it is inadvisable, because while the question has never been litigated, it may be at anytime and litigation would depreciate the estate materially. As we say, "it is skating on rather thin ice." Since we know that interlocking the proceeds with a specific trust absolutely acquires the exemption, it is certainly a far better plan. Therefore, it is advisable that life insurance policies be made payable to the trustee for the specific benefit of the beneficiary and entirely outside of the realm of the estate. If the contracts are so drawn, the proceeds have the usual exemption.

Proceeds Payable to Estate

A VERY important question that arises very frequently, in fact I saw it here in print this morning, is, "How much of my life insurance should I leave payable to my estate?" I think everybody has the same human instinct to minimize their taxes, legitimately. If the proceeds of life insurance payable to the estate are subject, in all jurisdictions, to the inheritance tax of that state and also to the Federal estate tax, then it is inadvisable to leave any material sum of life insurance proceeds payable to the estate. However, if the estate is very large and the beneficiaries quite numerous and very little cash is kept as a balance by the testator, it might be advisable to have a very limited sum of life insurance payable to the estate, for the purpose of clearing up any subsequent obligations that may occur; but, in general, I think it is rather a bad practice.

What Is Estate Shrinkage?

I AM going to show you an important factor of estate shrinkage. That word "shrinkage" is a generic term, and does not cover the full meaning. Estate shrinkage is the material amount of depreciation which occurs after the testator's death and before the estate passes to his heirs. In other words, Mr. Jones may have a million dollar estate and he thinks that that $1,000,000 will eventually pass to his heirs, unimpaired. The trustees and executors, because of inheritance taxes, all sorts of additional taxes and administration expenses, eventually transmit about $800,000. It is a very difficult matter for the executor or trustee to convince the beneficiaries, generally women and children, who are inexperienced in business, that this depreciation was unavoidable in the administration of the estate. The beneficiaries generally measure the efficiency of an executor by the amount of their inheritance left after administration.

Well Known Estates

OF course, there may be good administration, and, yet, very severe depreciation. I have gathered a few facts from an observation in the surrogate's court, as to how far an estate may depreciate. We have the estate of Mr. James Stillman, who left a gross estate of $41,381,000; the Federal estate tax was $10,822,245; there were twenty-one additional state taxes imposed for inheritance; the administration fees were close to $3,000,000. The total depreciation was in excess of $16,000,000, which, when expressed in terms of percentage, was 40.2%. Of course, I admit that that is a rather extreme case, and it would be illogical to notify your clients that depreciation of estates is 40%, but it shows the possibilities.

It is also noticeable in these large estates that a very small amount of cash is available for the purpose of these tax payments. For example, Mr. Theodore P. Shonts left an estate of $293,250, a rather modest estate, and yet there was a material depreciation. The administration charges were nearly $81,000, and the total taxes amounted to $116,807, representing a shrinkage of 40.1%. The cash available in this particular estate was only $3,900.

Incidentally, it is interesting to note that a former President of the United States, Mr. Theodore Roosevelt, left an estate of $900,000. Mr. Roosevelt's estate was in very good shape; he had probably been well advised. The administration totalled $43,500 and the taxes were comparatively small. He had a total shrinkage of about 11.7%. A million dollar estate which suffers only 11.7% shrinkage is considered to have been left in very fine shape though it would be inaccurate to say to our clients, "Your estate, if it is a million dollars, will probably shrink 11%," as that is a very conservative depreciation.

The estate of William K. Vanderbilt had a total of

28.9% shrinkage, the administration expenses being 6%.

We can quote various inheritance taxes, but they all necessarily convey the importance of providing from an outside source sufficient cash to pay all these charges.

In the case of William L. Harkness, a net estate of $53,483,000 was left, the Federal estate tax was $11,000,000, New York state $2,000,000, administration $1,500,000, and other costs, such as unpaid income taxes, amounted to $2,225,000. There we have a total shrinkage of approximately $17,000,000 or 24%. The final accounting in this case showed that $244,500 was paid as interest on loans negotiated to pay the inheritance taxes. There is a material shrinkage, and the interest factor in addition.

Method of Offsetting Depreciation

IN offsetting the depreciation of estates, there is only one method which is generally known, that can materially relieve the executor from the burden of paying these inheritance taxes, that is by providing life insurance sufficiently large to relieve the estate entirely of the burden of paying those taxes. Of course, the testator should be an insurable risk, and subsequently, as these debts were incurred by his death, the same event—his death—creates the proceeds to eliminate that particular debt. There you have the picture, shrinkage, on one side weighing down upon the estate, and another factor coming in, as immediate relief because the proceeds of life insurance act as an offset. Thus, eventually, the estate passes to the heirs unimpaired.

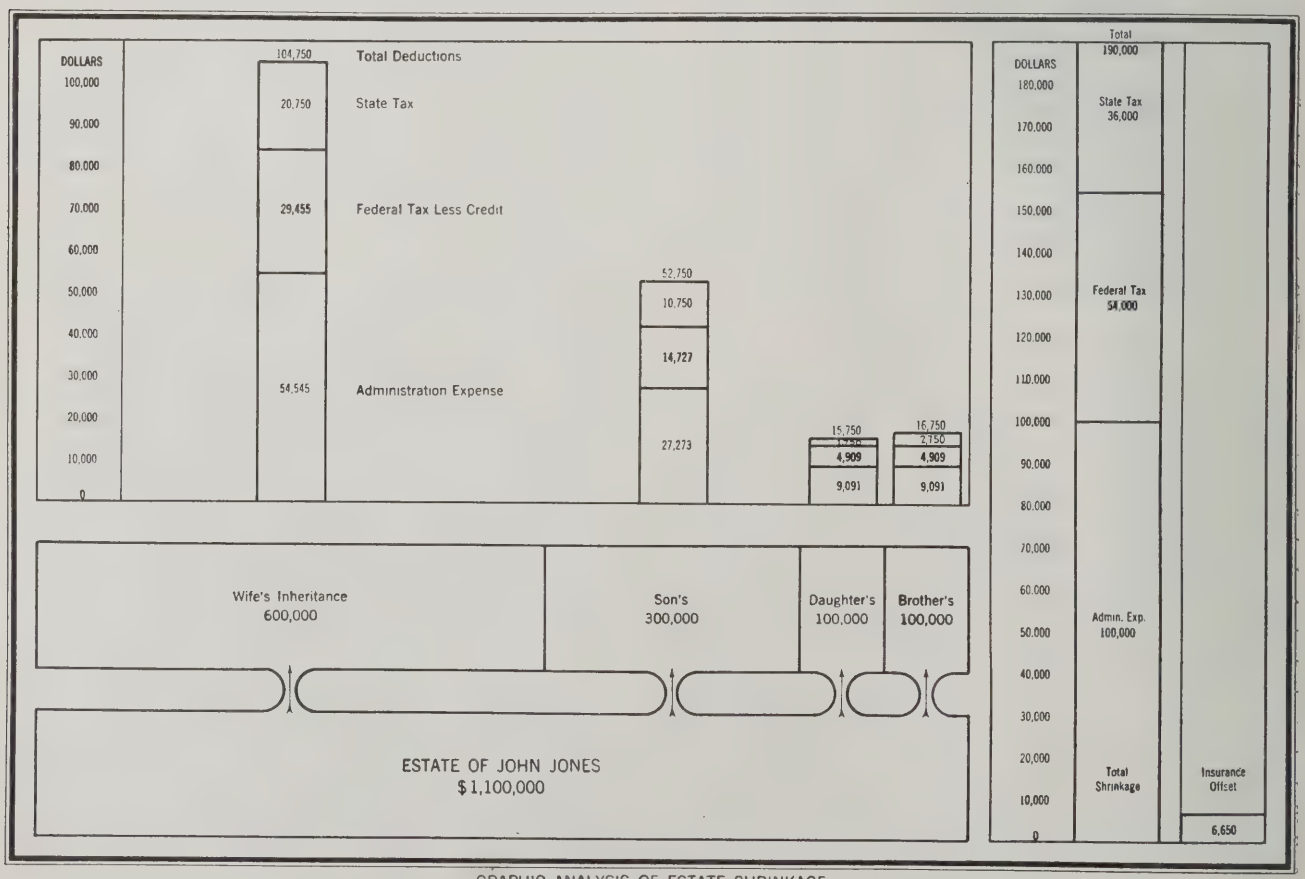
Here is a graphic analysis of the shrinkage of an estate.

I hope that this graphic chart conveys to you the very appreciable inroads on estates which is caused by shrinkage, and makes clear how tax laws operate.

A Great Work

IN giving this information to prospects in the field, the life underwriters are doing a great deal, I believe, to help the banks and trust companies in their capacity as trustees and executors of estates. It is a great satisfaction to the trustee to pass on the estate unimpaired, as satisfied legatees, having confidence in the bank or trust company, will probably come back as customers.

May I leave you with this thought? From time to time, review this factor of shrinkage of estates with your clients, and suggest to them that they should provide from an outside source a material sum of money to offset that depreciation, you will then, in turn, be helping the life underwriters who have always desired to co-operate with the banks.



GRAPHIC ANALYSIS OF ESTATE SHRINKAGE

LEON G. SIMON

Tribute to Frederick Vierling

W. G. LITTLETON (Vice-President, Fidelity-Philadelphia Trust Company, Philadelphia): Mr. President and Gentlemen: The address that we have just heard and the other addresses that we heard this morning and yesterday show that we are now in the high light of our experience, after eight years of work in this Mid-Winter Trust Conference. But as in life, with the high lights there are shadows, the shadow that lies upon us today is due to the absence from our midst of Fred Vierling. Mr. Vierling, as you all know, was indefatigible in his efforts to help all of us in these Conferences. I will not go into detail, except to say that his paper on "The Mechanical Handling of Trust Records," last year, together with the correspondence I had with him after the Conference, was of great use to me. I found that Mr. Vierling had started out with the same prejudices in favor of a certain way of keeping trust records, but that he had progressed, and, apparently, I had not, until I read his paper.

It was but a few months after I heard the sad news of his death, that my company and another large company in Philadelphia consolidated. It was then that the benefit I received from his paper came home forcibly to me, because prejudices in favor of a certain method had been removed from my mind because he had outgrown them and had shown me how they should be outgrown. If it had not been for that there might have been considerable friction in getting together the records of two large companies.

Now, I mention this in detail, because I have never yet failed to give him credit for doing me a great service in that line, and my official life has been rendered smooth in the working of the consolidation, because of this benefit that he did to me. And, gentlemen, I will only say that when I heard of his death, I felt a deep sense of personal loss, and now I am through, except to say that I believe there are many others here who miss the deceased Trust Vice-President of the Mississippi Valley Trust Company.

CHAIRMAN MCLUCAS: The next subject to be handled by Mr. William J. Stevenson, Vice-President of the Minneapolis Trust Company, of Minneapolis, is entitled "Settling Estates as Executor or Administrator—A Symposium." Mr. Stevenson.

Settling Estates as Executor or Administrator

A Symposium, led

***By* WILLIAM J. STEVENSON**

Vice-President, Minneapolis Trust Company, Minneapolis, Minn.

MR. CHAIRMAN, Ladies and Gentlemen: Some months ago, I prepared for our Advertising Department an outline which formed the basis of the outline* that we are going to use today, though I prepared it for a booklet that was to be the basis of an argument for using corporate fiduciaries rather than wife or friend as executor or trustee. That booklet, I understand, has been distributed, and is entitled, "What he left to his wife."

Now, of course, considering the purpose of the outline, we wanted to make it as comprehensive and, perhaps, as complicated as possible, so as to show the absolute impossibility of a man's wife performing all those duties. It would not have needed to be complicated in order to convey the message, but it emphasizes it a little to put in all these details and use the phraseology that we used.

This outline is now being adapted by Mr. Mershon to an entirely different use. Dr. Mantz told you, yesterday, that one of the first trustees was Moses. Let us see if we have improved any on the methods of Moses since we started the trust service. This symposium will be most beneficial, if the whole assemblage will participate in the discussion of the various subjects as they are developed by the various speakers. Let us have your experiences and your questions and your contributions of ideas about handling the affairs of a decedent. Necessarily, our general discussion must not go very much into our legal duties, because we all have such different statutes that it would probably serve no useful purpose to discuss the peculiarities of our own statutes, unless, perhaps, someone has something to tell us about a statute that is better than the one we have, and then perhaps we can improve by amending our own. I think we will get most out of this discussion by confining ourselves to the practical side of the handling of estates; the description of specific cases that we may be able to recall; the economies that we can use for the company and for the estate. We must not be too elementary about our subject, or we will take too much time, but let us have your every assistance in determining best methods for handling things, for fixing responsibilities, for re-

*See page 70.

calling duties; perhaps mentioning some of the difficulties that you have met in particular estates that may be typical of other estates; perhaps some of the losses that you have met and that might have been avoided by an improved system.

I, and perhaps most of you, have said to prospects that it really does not matter much what a trust company charges because in every estate of any size the trust company will justify its charge and will either save or make for the estate infinitely more than the charge that is made by the company. Now, let us see, this afternoon, if we can justify our claims to that superiority. I think we can, if we will all be ready to talk out in meeting. We are not going to run this symposium on any time schedule, some speakers will necessarily take very little time and some will necessarily take a good deal of time. You will want to discuss some phases much more fully than others. After the first speaker has talked, you will then be given a chance to discuss the phases of the administration of estates that he has developed or covered.

The first speaker covers "The Period between Death and Probate,"—or rather, the period between the time that you find that a will has been made and the commencement of the probate, because there are duties and responsibilities and many other things to be done wisely, even before the death of the testator, in most estates. Mr. Roland E. Clark, Vice-President of the Fidelity Trust Company, of Portland, Maine, will talk on the first subject.

The outline distributed at the Conference and upon which the speakers based their remarks, follows:

*Outline of Duties in Settling Estates as Executor and Administrator

1. Period Between Death and Probate.

(a) Obtain original of last Will.

(b) Confer with all persons familiar with affairs of decedent.

2. Probate.

(a) File Will, through attorney, in Probate Court.

(b) If necessary, obtain orders from Probate Court through attorney for cash allowance to widow and children for support during Probate, and for other statutory allowances.

(c) Attend hearing in Court with witnesses to prove Will.

(d) Obtain appointment from Court as Executor and file acceptance of this appointment.

(e) Obtain from Court appointment of appraisers.

(f) Notify banks, safe deposit companies and post office of death of decedent.

3. Obtaining Possession of Assets—Inventory and Entering on Books of Executor; Discharge of All Debts.

(a) Investigate books of account and records and private papers.

(b) Collect all valuables not in safe deposit vaults and remove to vaults.

(c) Prepare complete, detailed inventory of all assets, including household and personal effects.

(d) Attend meeting of appraisers to assist in accurate valuations.

(e) Collect miscellaneous items due decedent, including interest in other estates or in trusts present or future, and insurance proceeds.

(f) Collect all interest and dividends due estate.

(g) List specific bequests to be delivered.

(h) Obtain all property in custody of others, paying indebtedness necessary to release property held as collateral for bank loans or brokerage accounts.

(i) Arrange for proper supervision and representation of business interests of decedent.

(j) Examine all claims filed in Court, determining correctness of accounts and adjusting conflicting claims. Ascertain what defenses there are, if any, and after Court hearing on contested claims, pay claims allowed by Court.

4. Real Estate—Possession and Investigation of Physical Conditions, Fire Insurance, Liability, etc.; Contracts Outstanding for Purchase and Sale.

(a) Obtain all papers relating to real estate.

(b) Personally inspect all real estate if possible or obtain reports on its condition.

(c) Ascertain status of taxes, mortgages and leases.

(d) Arrange for management and collection of rents.

(e) If circumstances require sale, have the property properly listed for submission of offers.

(f) Ascertain if adequate insurance is carried on all property.

5. Analysis of Investments and Decision as to Disposition.

(a) Determine propriety of retaining or selling securities, taking into consideration:

1. Investment specifications in WILL
2. Market conditions
3. Proper diversification of holdings
4. Reports of Statistical Department after special research
5. Consultations with well informed persons in particular field
6. Minimizing of taxes
7. Ultimate disposition of estate.

(b) Determine policy as to liquidation or sale of business with due regard to wishes expressed by decedent.

6. Estate, Inheritance and Income Taxes.

(a) Attend to determination of Inheritance Taxes due in decedent's State, obtaining composition agreements if necessary from the Attorney General.

(b) Attend to Inheritance Tax matters in other states

in order to obtain transfers of stocks of foreign corporations. Procedure differs materially in various states.

(c) Make Income Tax Return showing income of decedent for period of taxable year preceding his decease.

(d) Make Income Tax Return for estate showing income obtained during probate but after deducting all items specially allowed estates in the particular State.

(e) File with U. S. Internal Revenue Department for Federal Estate Taxation preliminary notice within sixty days after appointment, giving estimated value of estate.

(f) Make detailed return to Internal Revenue Department for Federal Estate Tax and pay proper amount of tax, obtaining credit for state inheritance taxes.

7. Payment of Legacies and Dispostion of Miscellaneous Personal Property.

(a) Give careful consideration as to disposition of automobiles, horses, diamonds, works of art, household furnishings, being governed by wishes of decedent as expressed in his will and by the requirements of the estate.

(b) Determine best time and method for disposal of personal property with special consideration of any valuable collections.

(c) Payment of legacies and obtaining final receipt and release from legatees. First ascertain if legatee has assigned legacy.

(d) Obtain from Court final decree of distribution and attend to recording certified copies where necessary.

8. Final Accounting and Establishment of Trust Funds.

(a) Make full accounting of all receipts and disbursements to Court, sending copies to interested adult members of family.

(b) File inventory and appraisals in Probate Court.

(c) Obtain Order from Probate Court discharging Executors after filing receipts from all legatees and devisees.

(d) Petition Court for allowance on account and for distribution of estate according to Will.

(e) Attend Court for hearing on Final Account, explaining items and all transactions.

(f) Delivery to Trustees named in Will of all property to be placed in trust.

I. Period Between Death and Probate

ROLAND E. CLARK (Vice-President, Fidelity Trust Company, Portland, Maine): Mr. Chairman, Ladies and Gentlemen: Judge Stevenson has indicated to you that the first subdivision of this "Outline of Settling Estates as Executor and Administrator" is changed to read, "Period Between Time We Learn of Execution of Will and Probate." This change is made as I feel that we have real duties incumbent upon us from the moment we learn that we are named as executor of any particular will. Of course, such of these duties as exist prior to death would not be applicable to that part of this topic which refers to our acting as administrator of estates.

Very obviously our first duty, when we learn of such appointment, is to get the will into our possession, if possible, for safe keeping and also to obtain the testator's permission to let us read it over with him or with his attorney. At that time, we should make for our permanent file, so that it is readily available at any time, a synopsis of the will. It is most important that this synopsis make particular and detailed mention of the burial provisions, if any, contained in the will and even go so far as to make notation to the effect that the will is silent as to burial provisions, if that is the fact.

In order to show the vital importance of a record of burial provisions, let me cite just one particular instance that came to my attention a month or two ago. A certain person named us as executor of his will and, apparently, had no intention of giving us any information as to its provisions. After some persuasion, I was permitted to look at the will and found that this testator had made a specific provision that it was the duty of our company as executor to see that his body was cremated and his ashes scattered off a certain point on the rocky Atlantic coast. I simply cite this as an illustration to show that it is absolutely necessary that we get such information as this into our files at some time prior to the decease of the testator.

Importance of Will Memoranda

IN this connection, several institutions very wisely and very naturally have printed and distributed to those customers who have named them as executor, some sort of a memorandum pamphlet which provides for setting forth therein information which will be of vast assistance to them after the death of the testator and particularly during the period between death and probate of the will. I have here such a pamphlet now in use by an institution in Boston, and I want to give you just a brief outline of the useful information that can be placed in it. This particular blank is entitled, "Confidential Memoranda for the Use of Executor of Will of ——— ———," and it provides for the following information: The full name of the testator with date and place of birth, date and place of marriage, and permanent post office address; statement where his original and last will may be found, and, what has already been indicated as vitally important, expression of his wishes, if any, as to place and manner of burial. Then appear the name of husband or wife and the names and addresses of all children, together with the dates of their birth, followed by the names and addresses of all heirs-at-law and next of kin other than husband, wife or children, with similar information as to each of them. Provision is also made for specific mention of those related only by half-blood or by adoption. Next comes a list of safe deposit boxes with their location and number and a statement of the names of those who may have access to any of such boxes; a statement of the combination to the private safe in house or office, and the name of any one to whom that com-

bination may also be known; list of bank accounts; list of life insurance policies with full details as to name of the company, amount, name of beneficiary, and type of insurance. Next a schedule of personal property with particular notation as to any of such property, tangible or intangible, that may be mingled with the testator's property and yet title to which may be in another. And finally, a schedule of real estate with details as to any mortgages thereon.

This is but a hasty description of the valuable information which can be assembled in this or a similar booklet and which can be used to real advantage. If we have such a booklet, we can readily hand it to our customer when he notifies us of our testamentary appointment. We can more easily talk to him as to his family and business affairs and thus show him the advisability of placing in our hands at once all of this data to which I have referred. Having done this, we will have acquired information which is absolutely invaluable and necessary to us later on. If such a booklet is not used, then care should be taken to procure this information either by way of letter or by personal interview and to have it systematically filed so as to be available at a moment's notice. Having done this and having placed the will in safe keeping, or at least having ascertained its location, we will have performed duties which are really incumbent upon us at this early date. One of the hardest problems which we have to contend with is to convince the public that a corporate fiduciary renders real personal attention and that those interested in the estate get in close personal touch with the executor. We all encounter that difficulty. If we start in just at the time the testator makes his will and begin to show an interest in him, in his family, and in his business affairs, so far as may be necessary, we have already started to break down the feeling that the corporate fiduciary does not supply the personal touch as does the individual fiduciary.

At Time of Death

NOW we come to the time of death. It is my understanding that it is intended this afternoon to create discussion upon these duties as set out briefly in the outline which has been distributed to you. It is quite possible that some of you will not agree with the statement I now make. Immediately upon learning of the death of a testator, it is my belief that some one from the institution named as executor should get in touch with the family of the decedent. I do not mean by this that we should send a clerk with a note of sympathy, but I do mean that if any one of our executive officers, whether an official of the trust department or not, happens to know the family of the decedent, then that officer should, if possible, make a personal call upon the family and extend the sympathy of the institution and an offer of assistance, in case any may be desired. If the decedent lived at some considerable distance, then it is my belief that it is the duty of the institution to have some officer who is acquainted with the family, write a personal letter at the earliest possible date, extending the same offer of assistance. Right here is the opportunity with the proper use of tact, courtesy, and thoughtfulness, to show the members of the family that we are anxious and prepared to give them thoughtful and personal attention at this or any other time.

Obtaining Original of Last Will

THE next step is to obtain the original will. Of course, if we have a will in safe-keeping, we may think this is a comparatively simple matter, but how do we know that it is the *last* will? Let me cite another experience which occurred in my institution recently. A will was filed with us only six or eight months ago. The testator passed away three months later, and the will was withdrawn from safe-keeping as soon as we learned of his death. We had available all of the information which I have previously mentioned. This we placed in form for our attorneys and took it with the will to them for the preparation of the usual petition for probate. The member of the firm to which the will was handed set to work on the petition for probate. When the petition was nearly ready for signature, he recalled that this decedent had executed a more recent will naming us as executor, and that the original of this later will was then on file in their office. We had never been notified of the second will. No harm was done in this instance, yet it simply shows that we can never be absolutely sure that we have the *last* will in custody and that every reasonable and diligent effort must be made to ascertain if it is the *last* will we are submitting for probate.

Before Probate

AFTER burial and before probate of the will, there are numerous things to which we can and should give our attention. Very naturally, many of these duties will occur to you and, therefore, I shall attempt to mention only a few of them. Even though not yet appointed by the Probate Court, it is our duty at once to assist in safeguarding the assets of the estate. If there is perishable property, arrangements should be made with the family or business associate for its care; if there are tangible assets which need protection and segregation, similar arrangements should be made. Fire insurance policies should be checked up as soon as possible in order to obviate, in case of fire, the possibility of any loss occurring by reason of lapsed insurance. Notification of the death of the testator should be given promptly to the post office, to all banks in which he carried accounts, and to all safe-deposit companies in which he leased boxes. All mail should be taken into custody by the institution, and if it is clearly known to and agreeable to all parties concerned, I can see no good reason why it would not be proper to open and to answer that mail so far as is possible.

All data necessary for the filing of proofs of death in order to collect life insurance policies should be assembled at this time. Many policies can be collected without the necessity of waiting for the probate of the will, and even when they can be collected only by the duly appointed executor, an early compilation of this data may serve to prevent needless delay later on.

In none of these actions, suggested as proper just prior to the probate of the will, do I mean to signify that we should take any legal or business steps to which we may not then be authorized, but I do mean that there are many duties such as just indicated that we very properly can and should perform.

I realize fully that these remarks have embraced simple fundamentals known to all of you, and have attempted to touch upon only a few of the things that we should do and that we should think of prior to the time of probate of the will, my sole object being to start discussion, if possible, so that we may all obtain the benefits of each other's ideas.

Keeping Will Up-to-Date

JUDGE STEPHENSON (Raleigh, N. C.): Speaking of the duties of the executor during the interval between the time the will is made and the time it is offered for probate, Mr. Clark has omitted in his discussion one of the duties that I think is very important, from the standpoint of the executor. That is, to help the testator keep his will revised, so as to fit his estate and his family during that interval.

The will is made and filed; years pass; the condition of the man's estate changes, the condition of his family changes, and then the trust company, as executor and trustee, finds itself with a will that does not fit either his estate or his family. I am speaking of that with possibly more feeling than I would otherwise if it were not for the fact that one of the last things I did, before I left to come to this Conference, was to run over the wills in which our office of our company was named as executor, during the year 1923, and was surprised to find how many changes, for that one year, had taken place in the condition of the family and of the estate of the testators, that is, men who had married since 1923, men who had lost their wives since 1923, men whose estates had changed materially during that interval.

The way we are undertaking to meet that situation—and I am offering this merely as a suggestion—is around the first of the year, every year, by letter or by personal call, as the case may require, to see or communicate with each testator whose will came in to us three years before, suggesting to him either to go over his will himself or let us or his attorney go over it, to see if there were any changes that he might like to make.

I did that a year ago, and found that the testators appreciated very much the personal interest that we were manifesting in the wills that they had notified us that we were named in. I pass that on to you as a suggestion, because I know from our own experience that we are apt, any time, to get caught with a will that does not fit either the estate of the man or the family of the man, and it seems to me we have a duty to those men who have reposed enough confidence in us to name us as executors and trustees, to help them keep their wills fresh. (Applause.)

MR. CLARK: I think Judge Stephenson's suggestion is worth while and pertinent. Surely, some of you may have had some concrete cases which occur to you, which may throw light on our duties during this period. You may have other suggestions equally as pertinent as Judge Stephenson's, and the meeting is open for such statements.

EDWARD J. REILLY (Junior Trust Officer, National Bank of New Jersey, New Brunswick, N. J.): I think Mr. Clark and Judge Stephenson have both very ably pointed out some very important items which require attention, before a will is probated. This is a subject which has appealed to me as being particularly important, because in my study of all the literature that there is on the subject of administering estates, I find usually that we will get a book of two or three hundred pages, and maybe a paragraph in it, saying that it is the duty of the executor to locate the will, protect the property and prepare the will for probate. It seems to me we have a number of other duties, and I have jotted down a memorandum of the procedure that I pursue in New Brunswick, and which I think may be useful to some of the rest of you.

Burial Instructions

I THINK that Mr. Clark's suggestion of first making a personal call upon the family is exceptionally fine, it opens the way for your satisfactory service. I think, too, that an important duty is to ascertain whether there are any burial instructions which may be written into the will or a letter accompanying the will. Of course, it is our duty to take the necessary steps to comply with the instructions fully. Sometimes, testators specify in their wills that their body shall be cremated or request burial in a particular cemetery, and whatever those instructions are, if they may be reasonably carried out, it is our duty to do so. If the will does not contain burial instructions, the executor should see that the family has arranged proper burial. At times, there is no proper person available, and the duty will devolve upon the executor, whose plans should be guided by the testator's position in life, and a fitting concern for his religious preferences.

I do not like to appear to be in a funereal mood this afternoon, but I have had occasion, within the past six months, to have to provide for the burial of three different people. I never dreamed, when I went into the trust business, that it would be part of my duty to choose the dresses that women would wear when laid out in their caskets, but I have had to do that.

Reading of Will

NOW, a matter that I think concerns and worries a lot of us, is that of reading the will. With certain classes of people and certain customs in different communities, the will is read immediately after the funeral, "Come back and have the reading of the will"; other times, people think it should be deferred for a considerable time afterwards. The trust officer, I feel, should inquire of somebody who may be mentioned in the will, not a member of the immediate family, or some close relative, to ascertain the possible ideas of the family in that connection, in a tactful manner, and then arrange to have a formal or informal reading of the will, to satisfy whatever the requirements may be. Very often, there are legatees mentioned in the will, who come considerable distances and have to leave their business to attend the funeral. I think it is only fair to them that they should be advised immediately after the funeral, of any mention that is made of them in the will. Sometimes, they are very anxious to find it out.

Protection to Perishable Property

THE executor should take immediate steps to learn the exact condition of fire, liability and all other insurance covering the decedent's property. If any of the coverage is about to expire, arrangements for renewal should be made at once; if inadequate, proper coverage should be placed at once. If there is any property of a perishable nature, such as apple crops, perishable foodstuff in large quantities, steps should be taken to safeguard it; automobiles should be protected, and property exposed to the elements removed to safe quarters. The executor is charged with the same diligence in protecting the property of the estate as a reasonably cautious man would exercise in the protection of his own property.

Prompt Securing of Information

IT is important to secure trustworthy information concerning the decedent's affairs as promptly as possible; tactful and diligent inquiries as to his business interests should be made, and the facts necessary to a firsthand knowledge of conditions should determine any course of action which would be imperative at the moment secured. If anything is required to be done to safeguard those interests, the executor—although not yet clothed with authority—will be sustained in any action taken. Efficient administrator practice suggests it is desirable to secure, as soon as possible, detailed facts which will facilitate administration, though not to be used at once. They are important in filing inheritance tax returns and, generally, in safeguarding the executors; often, it is possible to secure them without difficulty, soon after death. Delay, at times, makes a complete picture impossible.

These facts are important: The full name of the decedent; the exact date of death; the place of death; the decedent's legal domicile; facts which support the conclusion of domiciliary residence, such as length of residence, voting place, ownership of home and property, church and club affiliations; exact age of decedent; cause of death; names and addresses of attending physicians and nurses; amount of cash found upon the person of the decedent or in his home at the time of death, which should be collected and deposited in the bank account; family tree, the exact age of life tenant at the decedent's death; determination of whether heirs are minors and, if so, their age; full information concerning banking connections. Immediately, advice of death should be sent to all institutions as well as to the post office, directing the routing of mail to the executor; the name and address of the attorney who drew the will; the family should be consulted regarding their wishes with respect to the retaining of that attorney. Sometimes a widow may want to retain an attorney other than the one who drew the will. I have had two instances of that in New Brunswick.

Heirs Not Mentioned in Will

ASCERTAIN whether any of the legatees are dead and who their heirs-at-law are; ascertain whether the decedent married after the making of the will, and whether any children were born to him after the making of the will. This is extremely important and I think that possibly some of our corporate fiduciaries may find themselves in trouble here.

I have in mind an instance in New Brunswick where a young lady now close to thirty years of age who, under the law, is entitled to about $75,000 of property that did not pass to her. Her father died when she was quite a young girl, the will had been made before her birth and made no provision for any after-born children. Under the laws of New Jersey, her father should have died intestate as to what she should have taken under intestate laws. The executors or individuals did not evidently know what the rights of this person were and possibly she or her children later on, may come back at those individual executors for the share that might have gone to her.

DELEGATE: Mr. Chairman, one important thing that I do not recall as having been mentioned is the providing of the family of the testator with necessary money. Nothing strikes home quite as forcibly as the lack of ready money.

Chance for Embarrassment

DELEGATE: I think we all appreciate these wonderful details of operation, but there is one thing, to my mind, that we have over-stepped. This is all predicted upon the idea that your own particular company is named executor of the will. Of course, if the will had been changed and some other executor named, you would be in an exceedingly embarrassing position.

I know of a case where a lawyer in the city of Baltimore—where we hail from—was appointed the executor of a man's will and, subsequently, that man changed his will and appointed our company his executor. It was very difficult and took a long time for me to explain to that lawyer how it was that we were appointed; we had nothing to do with it. However, if that man had gone up there and arranged for all these intimate details, he certainly would have been in an embarrassing position, when he found he was not the executor of the will. Personally, I do not think any of these things should be gone into until you have actually probated the will, under which you are operating. (Applause.)

JUDGE STEVENSON: Inasmuch as we are all taking notes on these various subjects as being developed by the speakers, it will probably be better to defer all of our discussion until after all the speakers have talked.

The next speaker covers the period of initiating or commencing probate proceedings. That will be discussed by Mr. C. Alison Scully, Vice-President of the National Bank of Commerce, New York City. Mr. Scully.

II. Probate

C. ALISON SCULLY (Vice-President, National Bank of Commerce, New York): Mr. Chairman, Ladies and Gentlemen: With the outline before you and the remarks that have already been made, the subject has been quite adequately covered, particularly in view of the fact that the probate of a will is very largely a statutory matter, regulated in each state. However, there are two or three circumstances in estates with which I am familiar, that may be of interest, as illustrating the regularity of procedure.

Accessibility of Witnesses

THE first one I would mention is an estate which in reality had its inception in this hotel. The testator, who was a resident of Philadelphia, had his will prepared by his counsel and proceeded to bring the will with him to New York, as he was coming here on business for several days' stay. During the time he was here, he decided that his will ought to have attention and proceeded to read it. Being satisfied with its provisions, he executed it, having for witnesses the room clerk and the public stenographer in the Waldorf-Astoria. He survived by several years but when the executor came to the point of probating the will both employees had long since left the service of the hotel and one had entirely disappeared. It was a matter of three months of continuous search before the erstwhile public stenographer could be located and the will probated. So, in anticipation of probate, if you are consulted about the execution of a will, it is always well to have witnesses who are easily accessible or whose signatures in case they themselves die within a short time after the testator, can be proved by any number of witnesses.

Liability of Fiduciary

IT is important, under the law of New York and many other jurisdictions, to have definite proof of the parties in interest. It may be of interest to some of you to learn that in making distribution of an estate, a fiduciary, under the law of New York, although acting in good faith and giving due notice by advertising and having his account confirmed, is personally liable, if there should later develop to be some person having a legitimate interest in the estate, who had not received his share. This can easily happen in case of children by a former marriage or under similar circumstances. The time to get this information is when the estate is begun and the procedings for probate are initiated. It is then possible to secure the best available evidence as to who are the real parties in interest, so the executor cannot or need not proceed without being fully satisfied that he is dealing with those who are in reality the parties in interest.

Ready Cash for Decedent's Family

IT has already been suggested that as soon as the will is probated, it is well to make some provision for the financial support of the family. I do not think there is anything more important than this, particularly after the will is probated. You may find it necessary to take proceedings to have a widow's exemption set aside, but that requires a period of advertising. There is nothing more reassuring to the members of the family than to know that funds are to be immediately available for their support, and it is almost always possible for the executor to form a reasonably safe estimate of the minimum funds that will be available during the period of three months immediately succeeding death. Nothing creates more confidence in the stability and fairness of the execution of an estate by the institution than to express an interest in the welfare of the family by inquiring as to their financial requirements during the period immediately succeeding death.

Finally, it is good practice everywhere, and it is the law in some states, that copies of the will should be sent to all parties in interest, so they may be informed as to exactly what their interest may be. Very often, the wills are read; very often, the trust officer undertakes to inform members of the family, verbally, that they are entitled to this, that or the other legacy. This creates a feeling of confidence, but it does not create the degree of satisfaction that the actual receipt of a copy of the will, by the person in interest, does. (Applause.)

JUDGE STEVENSON: The next step in our outline is, "Assembling or Taking Possession of the Assets of the Estate." That will be covered by Mr. R. H. Trott, Vice-President, Rhode Island Hospital Trust Company, Providence, R. I.

III. Obtaining Possession of Assets

R. H. TROTT (Vice-President, Rhode Island Hospital Trust Company, Providence, R. I.): Mr. Chairman, Ladies and Gentlemen: The question of obtaining possession of the assets of an estate is, to say the least, a very important one. Of course, we cannot administer assets that we do not possess. I am sure that we have, all of us, had the very unpleasant experience of discovering that we had owned for some months an outlying wood lot that we did not know anything about. I think one of the most, perhaps not pertinent but usual criticisms of a corporate fiduciary is the fact that, in dealing with an aggregate volume of assets, it does not pay proper attention to the individual asset. And I know of nothing that lends itself more aptly to this criticism than the failure on the part of a corporate fiduciary to reduce all the assets of an estate to possession. This is sometimes rather difficult, when the assets consist of such things as racing stables, wild gamepreserves, canals or orange groves; nevertheless, we have to do it.

Simplifying Problem

THIS outline seems very inclusive and fundamental. I believe that our problem in reducing these assets to possessions can be very much simplified if we encourage the testator to give us during his lifetime a list of his assets not only those he has but those he expects to realize on in future. Every successful man has a great many things of some value, that he has perhaps forgotten all about, or a piece of property or an interest in a particular company that he alone knows a great deal about. We, of course, must keep this information confidential. Our testators should be urged not only to tell us but tell to their families and make their families realize that if anything happens to them, we either know all about their property, already, or that we are to be told immediately by members of the family.

Furthermore, in taking possession of assets, it seems to me that it is not only important to get everything there is, but to get it in such a way as to inspire the confidence in us, not only of the members of the testator's family but also of his business associates.

Access to Safe Deposit Box

A MAN may have told his family that a corporate fiduciary is to handle his affairs but they do not always realize it as they do not expect him to die. After his death the time comes to take over the property. Perhaps, his widow has had access to his safe deposit box, and without being openly suspicious she necessarily is rather hesitant about opening her husband's box and turning over all of his wealth to a corporation.

It frequently happens that someone other than the testator has access to the box, a joint control. While, perhaps, we have not the right to prevent anyone else going to that box, we ought to know what purpose he goes for and what he takes out. It would, to say the least, be very embarrassing if we found, between the period of the man's death and the time we were authorized to open the box that someone having joint control had removed the assets.

Initial Contact

A SENIOR executive and not a securities clerk ought to establish the initial contact. The beneficiaries are turning over all their property to us, and we cannot administer the estate successfully in an atmosphere of suspicion. That initial contact in taking over the property of the estate is, it seems to me, really vital to the successful administration of the estate.

We ought to begin to reduce assets to possessions as soon as the man dies. Take the case of a man who is running a one man business, and has perhaps been sick for some time. In the event of his death an immediate contact should be established with that business, to encourage the subordinates to look to us for assistance in the conduct of the business. The supervision, if not the actual management, should be immediately taken over, even before the will is probated. Then, too, in encouraging a man who has made a will in our favor to talk about his property to us, we perhaps pave the way for a voluntary trust or agency account.

We ought to encourage our testators to keep accurate records of account, to let us know what their securities cost him, to list all of their assets. Most successful men have thousands of dollars lying around in non-liquid assets. I think we ought to encourage them, even if they will not leave a list with us, to leave an accurate, full and complete list in their safe deposit box or in the possession of their confidential secretary or a member of their family.

Appraisers. It is a good practice to suggest as appraisers those who are familiar with the testator's affairs, the broker, perhaps, with whom he was doing business or a business associate. We ought of course to see that the appraiser's fees are kept within a reasonable limit.

In the matter of paying claims, it is a good practice to refer claims to members of the testator's family for approval, even though they may be perfectly legal claims. If there are no immediate members of the family, they should be referred to the residuary legatees.

JUDGE STEVENSON: In some jurisdictions, the representative of the estate takes possession of the real estate and full charge of it for at least a time. Of course, in others, the representative has nothing to do with real estate, but the subject of the possession and care of real estate, in such jurisdictions where the matter has become important, will be covered now by Mr. F. A. Carroll, Vice-President of the National Shawmut Bank, of Boston.

IV. Real Estate

F. A. CARROLL (Vice-President, National Shawmut Bank, Boston, Mass.): Mr. Chairman, Ladies and Gentlemen: About a week or so ago, Congressman Conry of Lynn, told this story at a dinner at which I was present. A mission was being given in Lynn, the first week of the mission being for the married women. During the course of the mission, a very young and fervent missionary father gave a sermon on the joys and beauties of motherhood. After the service was over and the women were going out, one mother of two children said to a mother of fourteen, "Wasn't that a wonderful sermon Father Farrar gave us, tonight?" And the mother of fourteen said, "Yes, indeed it was, but I wish to God I knew as little about it as he does." (Laughter.)

I tell you that story not to bring to your mind the fact that I do not know anything about real estate, because I am supposed to know about it, both in the Trust Department and in the Real Estate and Mortgage Loan Department, of which I happen to have charge, but rather to bring to you the point already touched upon that we do not have much experience as administrator in connection with the real estate because, under the common law, real estate goes directly to the heirs at law, and the administrator has nothing to do with it. Under a will, specific bequests of real estate go direct to the legatees, even residuary legatees.

There are some instances in which we have to do with real estate in our technical capacity as executor and a great many in which we have to do with real estate in our practical capacity as administrator and executor. The heirs-at-law and the legatees to whom the real estate goes directly, handle everything in connection with the estate. We handle the real estate as agents.

Importance of Title Search

WHEN we start to find out about the title of the real estate, we may find things that do concern us as executor and administrator, because relating back to the period prior to the testator's death. It may be necessary to have the title searched to get all possible information in reference to liens and attachments.

In Massachusetts, for instance, suit can be brought by attachment on mesne process, attaching at the beginning of the suit. You might find, if you looked up the title, that there were attachments outstanding about which the relatives knew nothing, either in a suit that had been started and dropped or in one that was actually in the court. Therefore, it is important to make a careful search of the title, if you are charged either as agent for the heirs or legatees, or in your official capacity of handling the real estate of the testator or the deceased. We have never turned up anything strange except, perhaps, some attachment or lawsuit in which we have an actual interest.

To find out the exact title means something more than collecting all papers. In Massachusetts, we have neither title insurance nor certificate of title; we have a deed which represents ownership in the land, but that deed in and of itself means nothing, because there is nothing in it which shows whether the property has been conveyed out sometime prior. We may find, in looking up our papers, some evidence of mortgages, paid but not discharged on the records or evidences as to insurance, etc. We make every search we can as I am sure you do.

Personal Inspection and Insurance

WE, personally, inspect the property, not leaving it to a clerk or minor official. We advertise, of course, as you do, that we give personal and detailed attention to the management of everything that comes into our hands. We try to live up to that by having somebody in the bank who understands real estate examine the property from several standpoints. He goes to see the physical condition of the property, what repairs are necessary, and the character of the tenancy. He also makes a very careful inspection as to present value and future prospects of the particular neighborhood.

We have different methods of going into the insurance. As you know, the great argument today of life insurance men is that they will analyze your whole insurance estate. In the casualty field general brokerage men will come to you and say, "We shall be glad to analyze the whole insurance situation in any estate." After we examine the policies and find that a certain brokerage house has placed a policy, we can get from them full, well rounded, technical advice as to the insurance situation.

It is very important, as the other gentlemen who have spoken before me have told you in reference to personal property to see that necessary insurance on real estate, including liabilities, is in effect and that it is continued in effect. We have to find out about the tax situation. If we cannot find the tax receipts, we inquire whether or not the taxes have been paid. We find out the terms of any mortgages there may be on the property, lest we be in default in the payment of interest, and about the general terms of any leases.

We, as trustee, have to find out whether the property is the kind that we must hold and if it is a paying investment. This can be done by analysis of the expenditure and the income. If we have to hold that property for some time, we get expert opinion of the men in our bank, who are familiar with the particular locality and we rely upon that opinion. If they cannot give it we get outside expert opinion on the value of the property and its future possibilities.

Practical Management

HOWEVER, in the practical management of the property, sometimes we collect the rents ourselves and sometimes we have a real estate man do it for us.

By so doing we are not delegating a discretionary duty but merely giving out a perfunctory collection of the rent. Whether we do everything in our job as executor, or have somebody else do it for us, depends upon the practicability of doing it ourselves, on the location of the property, etc.

Sometimes, under the will, we have power to sell either at private sale or at auction which we do, when in our discretion as trustees, it seems advisable. We can take advantage of that right under the will or we can apply for license to sell from the probate court.

Better to Be "Hard-Boiled"

I THINK the most important part of this discussion of real estate, in so far as my experience is concerned, is this: There has been criticism of trust companies in the handling of real estate. I know that there are, in Boston, for instance, a number of real estate operators who go to the various trust companies to find out if they have any property, on the theory that they are more likely to find bargains on account of forced sales, due to lack of interest of the banks and trust companies in getting the best prices on sales. I think our greatest duty, as trustees, is to handle that property exactly as if it were our own, getting the last dollar out of it. I would rather be known, in Boston and elsewhere, as a "hard boiled" man from whom you could not buy real estate at a sacrifice, than to be known as one who might have bargains. If we can all take that attitude of being "hard boiled" and getting the last dollar out of the real estate, we would be spared a lot of the criticism which I know exists.

In our own experience, we have had tenement property, store property, unimproved land and some factories. Each has to be treated differently and has its own problem. We have paid particular attention to these and have tried to figure out what their prospects were. In one instance, we were offered a price on a piece of property in Somerville which seemed reasonable at the time. We then had two or three offers at once which we could not understand as it had seemed to be dead property. Upon inquiry, we discovered that Mr. Ford was planning to bulid his new factory there, which had sent up the value of the real estate. We held it and got twenty per cent more on the sale.

The same is true of another piece of property which we hold on Talbot Avenue, Dorchester. We had been offered what we thought a reasonable price, but knowing that the Shawmut branch of the elevated was to have its terminal at Peabody Square near this property we forecasted a rise in the value. We held it for two years and just before I left, we signed an agreement on that property, adding about ten per cent to the price by holding it a little longer.

I think if we have any duty in respect to our real estate, it is to get just as much as possible out of it by a careful application of judgment and thought, not only by our trust officials but by the other officers in the bank. When we say to a prospect, "The Shawmut Bank will be your executor," we mean that everybody in the bank is available, whenever necessary, to give real service to the person placing his property in our care.

That is about all I have to say in connection with real estate.

JUDGE STEVENSON: The next step on our outline of this subject is, "The Analysis of Investments in the Estate," to be covered by Mr. A. F. Young, Vice-President of the Guardian Trust Company of Cleveland, Ohio. Mr. Young.

V. Analysis of Investments

A. F. YOUNG (Vice-President, Guardian Trust Company, Cleveland, Ohio): Mr. President, Ladies and Gentlemen: I want to disclaim any right to be chosen from this distinguished group to present the topic, which, I am sure, every trust officer regards as of paramount importance in the process of estate administration. Personally, I feel that trust companies have pretty well fortified themselves in the operating end of trust service, and that there is little chance for negligence or misconduct. But, unfortunately, there are still many trust companies which handle their trust investments according to the whim of their trust officer, or, perhaps, according to the judgment of an executive, finance or trust committee, unsupported by accurate data, scientifically compiled and applied to each particular trust.

What a Client Has a Right to Expect

AS I see it, when a man commits the care of his fortune to a trust company, he does not do so, believing that he is merely substituting the judgment of another individual or group of individuals for his own, but he honestly believes, and he has a right to believe, that he is purchasing a scientific combination of facilities, which will bring to his securities accurate data and have them applied by investment experts.

I am by no means an alarmist, but it is rather an astounding thing to find, upon visiting certain trust companies, that literally millions in trust investments are being turned over to a trust officer to follow when and as he wills, without other facilities than his own general knowledge. Just think of it! This trust officer, usually the busiest man in the bank, more or less overwhelmed by his manifold problems, conferring all day long with his trust clients, and, at the same time, trying to specialize in investments.

Now, in some trust companies, we find the trust officers supporting his judgment with the judgment of a trust committee composed of members of the bank's directorate—an excellent idea, and I believe every bank should have its trust committee—but, by itself, it is totally inadequate. Is it reasonable to expect that this trust committee can, in an hour's time, once or twice a

week, wisely invest all idle trust funds, digest financial statements, study general business conditions, watch market fluctuations, analyze rights to subscribe and conversion privileges, and do all the other things so essential to any adequate handling of trust funds?

Then, in other trust companies, we find a system set up whereby the trust officer and trust committee are permitted to call on well known national investment specialists for such information as they may deem desirable. Helpful as all these services are, they are, necessarily, inadequate, spasmodic and inappropriate for application to the particular conditions involved. So that, as I see the situation, our trust companies will not long continue to enjoy the confidence now reposed in them, unless they set up for their trust departments a Securities Analysis Division—a division manned by experts and organized for the sole function of continuous analysis of trust investments.

Securities Analysis Experts

THE point I am leading to is simply this—it seems to me that practically all trust investment problems are solved through the creation of the proper machinery, which systematically receives the securities coming with an estate into the trust department, sifts and analyzes and digests them and then turns out the finished product—an estate with safe, sound, investments producing a steady and certain income. In other words, practically all the questions raised in the memoranda which Mr. Mershon has prepared are solved through a properly functioning Securities Analysis Division. For example, he has on this list: the propriety of retaining or selling securities, market conditions, diversification, consultation with well informed persons in a particular field, ultimate disposition. My friends, conclusions on all of these subjects are reached by a study of the facts developed by the Securities Analysis Division, and presented through a regular process to the Board of Directors of the Bank.

Specifications in Will

OF course, the very first problem confronting the trust officer is to determine, in each case, the investment limitations, if any, contained in the will. Mr. Mershon has headed it, "Investment Specifications in the Will." Concerning this question, there can be little argument. It is a fundamental principal in the law of trusts that the directions contained within the trust instrument are the guide to the conduct of the trustee. It is to the trust instrument that he must look for his orders, and these orders, in the absence of conferred discretionary authority, he must follow without question or hesitation.

If the provisions of the will are contrary to statute and sound business practice or are impracticable, then, I suppose, we must resort to our good old friend, the Court of Equity. In Ohio the Court has applied the test, "What would a reasonably prudent man do under the same or similar circumstances?" Your records should prove to the court that you did what the average intelligent business man would do, having in mind the size of the estate, the circumstances of the beneficiaries, and all other conditions.

Not long ago, we were acting as trustee of an estate which contained stock of a certain oil company. The directions contained in the will were that we should not sell that stock unless the company got into financial difficulty. Our trust committee felt very keenly that the stock ought to be sold, although it could not be said that the company was in financial difficulty, the trend was in that direction. There, was of course, confusion. But, fortunately, we were able to work out an amicable settlement. The illustration simply indicates the difficulty in trying always to follow the directions in the will. I have no doubt the court would have relieved in such a case, because, certainly, the reasonably prudent man would have sold that stock. Clearly, the trust instrument, therefore, must be the guide in all except very exceptional cases.

Classification of Securities

HAVING determined upon the investment limitations, if any, the question arises as to what actual process the securities go through on coming into the bank. The actual process of an estate through our Trust Department is as follows:

First of all, of course, the Department maintains a file on every company whose securities are held in the Trust Department. When a new trust comes in, a complete list of the securities goes to the Securities Analysis Department. There the securities are immediately classified as follows: Prime, High Grade, Medium, Speculative, Worthless. This classification fixes the degree of supervision which must be given the securities and determines the frequency of their review. Worthless securities are, of course, charged off. This classification, alone, gives pretty fair protection. But they are also classified as follows: Rubber, Steel and Iron, Oils, Rails, Public Utilities, Banks, Mines, Miscellaneous. This latter classification, insures, for example, that general conditions affecting railroads, will be applied to all securities held by the Trust Department.

If there are securities in the trust which have not theretofore been analyzed, the files must be brought up to date on the issuing company. Then, as a next step, there is prepared a complete picture, or layout of the trust on a large sheet. This shows every security according to its classifications. It gives the Moody rating on the security, the market value, the percentage of the security in its class, its percentage of the whole trust, the rate of interest on the security, and the amount in dollars.

Trust Investment Unit

YOU will see that this is a rather complete picture of the estate. In this form, the Securities Analy-

sis Division brings the trust to the vice-president in charge of investments. He takes it to the Trust Investment Unit, which is a group composed of the Vice-President of the Trust Department, the assistant trust officer in charge of the particular estate involved, and three members of the Securities Analysis Division. Here, the trust receives the application of the particular facts and conditions known only to the officer in direct charge of the trust. With this actual picture of the condition of the estate before it, and with definite knowledge as to the beneficiaries of the trust and their needs, the status of the trust for taxation, the trust's probable life and all the other intimate details, the Trust Investment Unit makes its findings. For example, the analysis of a recent new trust showed distribution of risk as follows: Bonds 20%; stocks 80%. Recommendations of the Trust Investment Unit were that the trust officers should work toward an ultimate distribution as follows: Bonds,—real estate, municipal, public utilities and rail 50%; ground rents 17%; stocks 33%. It was agreed, of course, that this could only be accomplished over an extended period of time and that sales and purchases should be made only at favorable opportunities.

With us, every estate has its individual investment program. Having determined upon the general program to be followed, the Trust Unit makes its recommendations for immediate sales and purchases, if any. If then, these general and specific recommendations are approved, a work sheet is made out, which shows, constantly, just what progress is being made toward shifting the securities and reaching the ultimate goal of diversification as prescribed by the Trust Investment Unit.

The conclusions of our Securities Analysis Department, and the conclusions of our Trust Investment Unit are all written into the formal minutes, which then go to the Trust Committee, composed of seven members of the Bank's Directorate, chosen because of special fitness in investment matters.

Membership of Trust Committee

WE have taken a good deal of pride in our Trust Committee. On that committee is an outstanding man in the textile industry, a successful merchandiser; a man from the steel corporation; a veteran investment broker; one of the partners in a leading real estate firm of the city; a successful lumber man, and two leading attorneys, one of them an ex-judge. This Committee, substantially as constituted at the present time, has been functioning for seven or eight years. Under the direction of our Securities Analysis Department and our Trust Officers, they have become, really, trust investment experts. These men are compensated well, they work hard and give very generously of their time and effort to the work of our Trust Department.

There is laid before this Trust Committee, the picture of the trust and the action of the Trust Investment Unit. With these, together with detailed information on each security, brought to the meeting from the files of the Securities Analysis Division, and available for reference if a director requests, the Trust Committee obviously is enabled to perform its duties intelligently, accurately and quickly, and to reach a judgment based upon fact, not upon mere general knowledge, rumor or hearsay. The result is, that the Trust Committee is relieved of all detail and its time is conserved for consideration of the larger questions of trust department policy. In turn, the action of the Trust Committee goes to the Executive Committee of the Board of Directors. Thus the securities in every trust must stand the acid test—Securities Analysis Division, Trust Investment Officer, Trust Investment Unit, Trust Committee and Board of Directors.

I am not going into further detail, but of course, these initial examinations of securities do not mark the end of the activities of the Securities Analysis Division. Regularly, all investments are analyzed and recommendations for sale or exchange made. Each trust, as a whole, is periodically reviewed, according to its classification, in exactly the same manner as at its inception.

The last item on the printed outline is, "Determining Policy with Reference to Liquidation or Sale of a Business, with due regard to wishes expressed by the decedent." Just a word on that. As I see it, the situation arising as to a business is not very different in principle or theory from the situation arising as to securties which are non-legal or unsuited for permanent trust investment. The trust company's duty is first to *analyze* it thoroughly. It usually puts its industrial engineer into the plant to make a study of the situation; its credit analyst to study the financial position of the company; and it calls into consultation such experts as it can command to counsel and advise; and obviously the conclusion reached is based upon fact. If that conclusion is the conclusion which the reasonably prudent man would reach under the same or similar circumstances—a complete record being kept of every detail and a report showing the process of the trust company's reasoning or conclusion, I have no fear in our state at least, of being held liable for any loss. In any event, our company does not feel called upon to unload immediately or to liquidate a business. I know we exercise a very wide discretion in that regard, and only liquidate when after a careful analysis, we believe the conditions are favorable. There are certain statutory provisions which apply in some states, but in Ohio our courts and legislatures have been very liberal.

Our trust department maintains a "Bible," as we call it, which carries a page on every security or piece of property ever reviewed by a committee. On this page are listed the dates and a résumé of the action taken. Reference to this page will tell at a moment's glance everything that has ever been done with reference to that security or property. The "Bible" also contains a page on every trust and every recommendation affecting that trust, with dates and details.

It seems to me in conclusion, that a tremendous responsibility rests upon the trust company with reference to its trust investments. As I said before, the law holds the trustee to the standard to which a reasonably prudent man would conform. This means that the trust company's judgment and discretion must at all times be properly and faithfully exercised. Certainly, an estate which has been supervised from inception to distribution, as I have outlined, affords little opportunity for question as to the faithful discharge of the trust company's responsibility.

JUDGE STEVENSON: Mr. Louis A. Bowman, Vice-President and Trust Officer of the American Trust and Safe Deposit Company of Chicago, has been asked to make a brief contribution to this same subject. Mr. Bowman.

Seven Commandments for a Trust Officer

MR. BOWMAN: Mr. Chairman, it has practically all been said already save one point. It is my privilege to be connected with a newer and less fully equipped trust company than the one the gentleman from Cleveland represents and if I estimate aright, the majority of us here today are connected with institutions which do not have, as yet, so complete a chain of organization as does the Guardian of Cleveland. I take it that, in a considerable majority of our cases, a much more distinct, direct personal responsibility rests upon the trust officer than is the case at the Guardian. So I have just a few words to say in behalf of the trust officer, who must take the initiative and reach or recommend conclusions regarding the securities which he finds under his jurisdiction.

Before I saw Mr. Mershon's splendid outline here, I had noted down in pencil a few points relating to the subject, and found that I had just exactly the same number that he has, seven. I suppose that "Bible" in Cleveland has at least "Ten Commandments" in it. We can easily get ten commandments for a trust officer, possibly, here are seven of them.

First, review the terms on which you hold these securities. Did you obtain them through will or through a living trust?

Are your powers broad or are they limited to legals; or are they still more closely limited than in the statute defining legals?

Second, review the length of time you are to hold the securities.

I think this is something of a factor and has not yet been mentioned. It may be for one year of administration, it may be for the lifetime of a young child, it may be in perpetuity for charity or education. We all have to do with all three of those stages, and our decision may to some extent be governed by the length of time we are to be related to the securities.

Third, review their probable market tendency and study the spread. If they are just now depressed but rising, certainly do not sell. If the tendency is the other way, it may be wise to arrange an immediate transfer.

Fourth, consider primarily the safety of the principal. If the securities are of doubtful value, arrange for their immediate sale, rather than wait for financial difficulties to arise, as in the case of oil stocks referred to in the discussion a few moments ago.

Fifth, consider the interest yield. In this connection I am frequently reminded of and have quoted to clients many times the suggestion written into his will by our great Chicago merchant, Marshall Field, when he advised his executors and his trustees to be governed more largely in their management of his estate by consideration of safety of principal rather than rate of interest. And it is interesting in this connection to note—related to what has been said earlier this afternoon—that Marshall Field died in a New York hotel, taken ill suddenly, without having revised his will, which he fully intended to do. He had mentioned to friends his intentions of doubling an eight million dollar legacy, making it sixteen million dollars, for a great educational and civic institution, that fund being administered by a trust company represented here today by some of its officers; the will never having been rewritten, the legacy of course remained at the original amount.

Sixth, consult with the ultimate beneficiaries of the securities. They can often render valuable and serviceable information.

Seventh, consider always, when feasible, distribution in kind. I have found in some cases that it is wise to advise the distribution of securities in kind, for it encourages thrift, it saves expense to the estate in brokerage fees, in reselling, and in other ways. I have a case in point right now, where stock in an industrial organization is held, and in the will there is a cash legacy to one of the employees of that industrial organization. She owns some stock already, and when the matter was proposed to her, of accepting her legacy in the form of additional stock in the company, she was more than glad to have her legacy paid in the form of that stock, even though there is no general market whatsoever for it.

So, it is my belief, Mr. Chairman and fellow trust men, that the trust officer who does not have, as yet, the completeness and system of organization through all these steps, of investment committees, of boards of review, and a security analysis division, may and should, by careful study and consideration of these points, render an efficient and economical service to the estate he represents and to the constituency he serves.

JUDGE STEVENSON: Our remaining three subjects are all rather brief, and I think they can be covered in a very few minutes.

The next on the outline is the subject of "Taxes," mentioning estate, inheritance and income taxes. That will be covered by Mr. A. N. Van Vleck, Assistant Trust Officer of the Guaranty Trust Company, New York.

VI. Taxes

A. N. VAN VLECK (Assistant Trust Officer, Guaranty Trust Company, New York, N. Y.): Mr. Chairman, Ladies and Gentlemen: Due to the efforts of the bar associations and fiduciary associations and throughout the United States and the cooperation of some of our states, many of the tax problems confronting the executor have been materially lessened but there is still room for improvement.

It is the aim of every executor to complete the administration of the estate as promptly as the circumstances of the estate will permit, but too many times the long delay before the executor can file his final accounting is caused by the failure of the Federal government or the state to give prompt service in the assessment of the tax. It is true that this delay does not, in most cases, hinder the payment of legacies and the setting up in part, if not in whole, of the trusts established under the will. Nevertheless, those who are interested in the residuary estate many times unjustly criticize the executor for the delay which is beyond his control. Two of our largest trust companies have figured that the average time for the completion of the administration of an estate is about eighteen months, which average, I believe, could be materially reduced by hastening the completion of our tax assessments.

In our Estate Section, each estate supervisor is assigned a number of estates and it is his duty to collect the information necessary for the various notices and transfer tax affidavits which need to be filed and to prepare such information in rough form, which, when completed, is delivered to the attorney who represents us in the particular estate, in order that he may put the notice or affidavit in final form for filing.

Filing Notices and Affidavits

THE first requirement of the executor is the filing of the Federal sixty day notice and, if the estate exceeds $1,250,000, we must also file a New York State sixty day notice. These notices are, of course, only approximations of the gross estate.

The next step is to proceed as rapidly as possible to file transfer tax affidavits in outside states where waivers are required for the transfer of stock of companies incorporated in these states, thus making it possible to put the stock in good delivery form should the occasion arise for its sale. There is no uniform transfer tax affidavit, some of these states requiring information as to all the assets of the estate, others requiring information as to the assets of the estate affected only by their particular jurisdiction. In order to avoid as much delay as possible, it is our practice to have on hand these forms of affidavits from several of the states where we have many occasions for filing such affidavits.

These requirements on the part of other states, as you all know, have long been felt by many to be unjust, and, aside from the tax, has resulted in severe losses to many estates by reason of the delay in getting the stock in form for sale. It thus behooves every executor to see that his attorney files such affidavits promptly with the tax authorities.

A very important step in simplifying the matter of securing the transfer of stock of foreign corporations has been accomplished by the states which have the reciprocal provision. The tax authorities of these states are now authorized by statute to issue a general waiver of notice and authorization or consent to the foreign corporation or its transfer agent to the transfer of its stock, such authorization being given upon proper application to the Tax Commission. This authorization so issued permits the corporation or the transfer agent to transfer the stock belonging to the non-resident decedent's estate upon being furnished with a certified copy of letters testamentary, a certified copy of the will and an affidavit of the executor or administrator of the estate to the effect that such decedent is a non-resident of the state in question. This form of affidavit used by the States of New York, New Jersey, Massachusetts, Pennsylvania and Connecticut is as follows:

STATE OF
COUNTY OF ss.

....., being duly sworn deposes and says that he/she is an executive officer, to wit; the .....of .....a corporation duly organized under the laws of the State of..... having its principal office at .....,

which is the executor / administrator of the estate of..... deceased, who died on the ..... day of..... 19.....; at the time of his/her death the domicile (legal residence) of said decedent was at ..... County of ....., State of .....; that this affidavit is made for the purpose of securing the transfer or delivery of the following described property owned by said decedent at the time of his/her death:

.....shares of the ..... stock of ....., (Designate kind of stock) (Give name of Corporation)

.....shares of the ..... stock of ....., (Designate kind of stock) (Give name of Corporation)

a ..... corporation. (Give state of incorporation)

a ..... corporation. (Give state of incorporation)

.....shares of the ..... stock of .....,

a ..... corporation.

.....

.....

Sworn to (or affirmed) before me this .....
day of ..... 19.....

.....
(Signature of affiant)

.....
.....
(Give official capacity of official administering oath)

My commission expires .....
Affix seal

Affix Corporate Seal

Calculation and Payment

OUR next step is the calculation as nearly as possible of the New York tax and, if not in available

funds, to liquidate sufficient securities within six months from the testator's death and make a tentative payment of tax within the six months to the state, thus receiving a 5% discount of the tax finally assessed.

While there is no time fixed by New York State as to the filing of the transfer tax affidavit, nevertheless, it has been our experience that the better procedure is to file the affidavit at the earliest possible date, even though there may be some matters still pending which may change the calculations. By this procedure, your affidavit has made some progress in the Department and, if it is later found necessary to adjust certain figures in your original affidavit, this can be done by an amended or supplemental affidavit which will be made a part of the original. At the time of filing the transfer tax affidavit a petition is also filed for the appointment of an appraiser and, as a result of such petition, a date is set for a hearing on the affidavit. At that hearing the appraiser submits his report showing the appraised value of the estate. Based upon this report an order is entered in the Surrogate's Court for the assessment of the tax.

The Federal affidavit must be filed and the tax paid within one year from the date of death. This, likewise, should be filed as promptly as possible in order to obtain a prompt review, but the final assessment always is delayed by reason of the 80% deduction which cannot be finally allowed until the New York tax is assessed. It has been our experience that the filing of the affidavit should not await the securing of all the final figures, as often times the field auditor is willing to accept changes in the affidavit without filing an amended affidavit. This procedure results in your getting a much earlier review of your audit and likewise a more prompt determination of the final tax.

Aside from the inheritance and transfer tax affidavits, the executor must also file a prior and subsequent to death income tax return. It is our practice also, as soon as we receive our appointment, to request the Federal Government under "Section 277-A, paragraph 4 of the Revenue Act of 1926," for an audit of income tax returns filed by the decedent, thus relieving the executor from any responsibility in the absence of receiving such audit within one year from the date of such notice to the Commissioner. While the New York Statutes do not have a similar provision, we have found, by such a request, that we are able to get an audit within a very short time.

In the matter of the preparation of subsequent to death income tax returns, a study should be made to determine whether or not it would be advantageous to the estate to make such return on a fiscal basis rather than an annual basis, thus enabling the estate to take its deductions, inheritance and transfer taxes paid within the fiscal period, against profits taken within the same time.

JUDGE STEVENSON: The next subject is, "Paying or Discharging Legacies." Mr. Chalfant, Vice-President of the Colonial Trust Company, Pittsburgh, Pa.

VII. Legacies

JOHN W. CHALFANT (Vice-President, Colonial Trust Company, Pittsburgh, Pa.): Mr. Chairman, Ladies and Gentlemen: I think the paying of legacies depends so much upon the laws of the respective states and the rules in force in other regulatory bodies that it would be quite unsatisfactory to discuss the matter here. My friends from Pennsylvania know it better than I. That is all I have to say.

JUDGE STEVENSON: Our last subject is, "Final Accounting," by Mr. Joel H. Prescott, Vice-President of the Union Trust Company, Detroit.

VIII. Final Accounting

JOEL H. PRESCOTT (Vice-President, Union Trust Company, Detroit): Mr. Chairman, Ladies and Gentlemen: I am going to be brief and add only one remark to the outline before you. In Mr. Simon's address and in other talks which I have heard along the same subject on the shrinkage of estates, there has been the statement that expenses of administration have been one of the chief factors for this shrinkage. This is allied somewhat with final accounting, because all disbursements are included in the final accounts. That is my excuse for bringing it in. I think that the statement should be made more clearly that the expenses of administration are primarily the fees of the executor and any attorneys fees and court costs. I believe the figures that Mr. Simon used and which I know have been used in other talks on the same subject, have included in the heading of expense of administration, the debts of the decedent, so that it is not just—at least to the trust companies who are charged with the administration of the estates—to show, for instance as in the statement shown on the screen, that the expenses of the administration amounted to about nine per cent of the estate. I think, as a matter of fact, they are nearer one per cent, and probably the debts left by the decedent, with which we are not concerned at all except to see that they are paid, make up the balance.

JUDGE STEVENSON: It is now nearly five o'clock, and as it seems too late for any discussion from the floor, we will now close this subject.

(Adjournment)

Fifth Session

Friday Morning, February 18, 1927

MR. McLUCAS presiding.

CHAIRMAN MCLUCAS: Gentlemen, please come to order. I think we have a rather good response, after the banquet party, in this group that is here this morning. Mr. C. M. Rogerson, Counsel for the Boston Safe Deposit and Trust Company, of Boston, will address us on "The Value of Reciprocal Laws." Mr. Rogerson.

The Value of Reciprocal Laws as Applied to Trust Companies Doing a Fiduciary Business

By CHARLES M. ROGERSON

Counsel, Boston Safe Deposit and Trust Company, Boston, Mass.

THE laws of several states hamper and restrict the effective administration of estates and the proper execution of trusts by refusing to permit trust companies organized under the laws of other states to act as executors or as trustees.

To illustrate this difficulty let us take as an example a resident of Massachusetts who has appointed a Massachusetts trust company to act as executor and trustee under his will. He owned a piece of real estate in New York and upon his death it becomes desirable to sell this land to the tenant, in part for cash and in part upon a purchase money mortgage. The executor finds that neither as such executor nor as such trustee can he compel the payment of the rent, convey the property or if he take back a mortgage can he foreclose that mortgage. Indeed, there is practically nothing he can do touching or concerning that land. The testator who knew the trust company, who had confidence in it and who wanted it to handle his property cannot have his wishes in this respect carried out. It is necessary to find some New York trust company or some individual to act as executor and trustee and to induce the Surrogate's Court to make the appointment. Sometimes that Court for reasons best known to itself wishes to make its own selection. The person who is selected by the Court may decide to deal with the property in quite a different fashion from the way in which the Massachusetts trust company would have dealt with it, may decline to carry out the sale already substantially closed or if the sale is carried out may decide not to remit the proceeds to the domicile but to administer them himself. This entire proceeding is wholly contrary to the wishes of the testator.

Further Illustrations

AS a further illustration a corporation may wish to issue mortgage bonds secured by a mortgage of all its property including land located in several states. The investment banker is ready to buy and a trust company has been selected and is ready to act as trustee; but wait —in three of the states in which real estate is located the trust company is not permitted to act. Local trust companies or one or more individuals must act as co-trustees for the purpose of holding title and of foreclosure, etc., and the whole mortgage indenture must be carefully revised. To what end? Merely to circumvent the restrictive statutes. No one is any better off except perhaps the lawyers.

Again, John Doe may make a voluntary or living trust. If he owns a piece of investment real estate in another state or perhaps has inherited a fractional interest therein, trouble arises. Unless precautions are taken the trustee may find itself compelled to endure an expensive chancery proceeding before a new and qualified trustee is appointed who can give a good deed to the land.

The same situations may arise where a trust company has been asked to act as administrator of the estate of a person who has left no will or as administrator to succeed a deceased or resigned executor, or as guardian, conservator or receiver.

These restrictions and hamperings can in large measure be avoided if taken in time and handled wisely. Special provision can be made in wills, trusts and mortgage indentures, but the bother and trouble remain. Care and pains must be taken to anticipate and avoid difficulties or else the executor or trustee must struggle to accomplish results entangled by restrictions and prohibitions.

Status of State Laws

THE status of the various state laws based upon the 1925 report of the Special Committee appointed by the Corporate Fiduciaries Association of New York appears to be as follows:

Sixteen states absolutely and unconditionally prohibit a foreign trust company (that is a trust company organized under the laws of any other state) from acting as executor or trustee. Among them are such substantial states as California, Massachusetts, Michigan and New Hampshire. The full list is as follows: Arizona, Arkansas, California, Florida, Georgia, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, North Carolina, North Dakota, South Dakota.

Five states permit a foreign trust company to act as executor or as trustee upon convenient and satisfactory terms. They are: Connecticut, Maine, Maryland, Tennessee, Utah.

As to Maryland it may be necessary that the fiduciary furnish a bond with sureties. If that is so I would be inclined to group it in the next following classification.

Fourteen states permit a foreign trust company to act as executor or as trustee upon more or less onerous and troublesome conditions such as requiring it to qualify like an ordinary foreign corporation to do business within the state or requiring that it deposit bonds as security with the state treasurer or other officer, or that it give surety upon its bond as fiduciary, or that it file reports and submit to the supervision of the banking department. These states are: Alabama, Delaware, District of Columbia, Idaho, Illinois, Montana, Nevada, Oklahoma, South Carolina, Texas, Virginia, Washington, West Virginia, Wyoming.

Seven states permit a foreign trust company to act as executor or trustee upon a reciprocal basis; that is, for example—New York will permit a Massachusetts trust company to act if Massachusetts will permit a New York trust company to do so; but of these only two grant the right upon convenient and satisfactory terms,—namely, New York and Vermont, and Vermont limits the right to act for its own residence to cases where 65% of the property is located outside of Vermont. The other five all impose inconvenient and unsatisfactory terms, such as requiring the payment of a fee, requiring sureties on bonds or requiring deposit of securities with a state official.

New Jersey requires an annual $250 fee, a $40 initiation fee, so to speak, and sundry reports.

Ohio requires the company to qualify to do business in the state in the same manner as a foreign business corporation; to deposit $100,000 in bonds with a state officer; to pay $100 fee; to be examined by the State Bank Examiner and to pay for the same.

Pennsylvania requires the giving of bond with sureties and probably requires the approval of the Court to each appointment.

Rhode Island probably requires either a deposit of bonds with the State Treasurer or the giving of a bond with sureties.

Wisconsin requires that $100,000 in bonds be deposited with the State Treasurer.

I vouch of my knowledge for none of the foregoing except as pertaining to Massachusetts and New Hampshire. If, however, it is approximately correct, what an appalling state of confusion and prohibitive regulation —only five states permit a foreign trust company to act on reasonable terms and seven only upon a reciprocal basis, and but two of these upon reasonable terms.

The entire matter seems to have appeared to the courts and the legislatures to be a question whether a foreign corporation shall be permitted to do business in the state and because a trust company is also a banking institution the question seems to raise a fear that a foreign banking institution will be doing a banking business within the state. In only a few instances have the fiduciary functions of a trust company been distinguished from its banking functions.

A Possible Solution

NOW the question arises—What can we do about it? Obviously this is no place for intervention by the Federal government or for compulsion by a Constitutional amendment. This whole matter is clearly one which belongs exclusively to the states. It may be true, certainly it is claimed, that national banks, wherever located, may act as executor or trustee in any state which permits its own trust companies so to act. That is not a remedy at least so far as trust companies are concerned. It is rather an incentive to go out and get better and more uniform laws.

Probably the only successful method will be to enlarge the number of states which grant reciprocal rights upon satisfactory terms. No better method than reciprocal legislation has yet been devised by which to induce a state to relinquish some of its rights. An enlightened self-interest and a generally prevailing desire for uniformity can in this way be appealed to. At the same time we must recognize the propriety of the state, being assured that it is affording its citizens proper protection.

Terms and Conditions

THIS brings us to a consideration of the terms and conditions upon which these reciprocal rights should be granted. These terms will naturally differ depending upon whether we are concerned with a trusteeship under a corporate bond indenture or with executorships or trusteeships under a will, and also whether the testator be a resident or a non-resident.

We may dismiss the corporate bond indenture quickly. Few protecting safeguards will be needed. The corporation and the investment banker may be relied upon to select a competent trustee and a safe one.

Suppose, for example, a resident of the State of New York should die leaving a will appointing a New York trust company as executor and trustee and leaving a piece of real estate in Massachusetts. What safeguards should Massachusetts throw about its permission that the New York trust company be permitted to deal with the Massachusetts real estate?* As a matter of comity most states have permitted a foreign executor to deal with and remove personal property. Why should Massachusetts become excited over a foreign executor or trustee dealing with real estate which certainly cannot run away? Are not the statutes dealing with the appointment of a foreign individual sufficient to protect the interests of Massachusetts creditors? I think they are and that if a New York trust company should appoint an agent upon whom legal process might be served, enough would have been done in this respect. I see no need of Massachusetts inquiring into the financial security of the New

*Perhaps I should say here, parenthetically, that the case in Massachusetts, of the Guaranty Trust Company, petitioner, seems to me to offer in Massachusetts one loophole. In such an instance as I have suggested, it is probable that the New York Trust Company would be permitted to convey that property, such a conveyance being merely a single act and not constituting, therefore, doing business within the State.

York bank or requiring that it give a bond with sureties or that it deposit funds with a state official. These matters are all for the protection of those beneficiaries interested in the property. Massachusetts need not feel concerned to protect the rights of these persons. The testator, whose money it was, has selected his fiduciary and the laws of his state may be relied upon to protect his beneficiaries. Duplication of effort in this behalf is unnecessary and troublesome.

A Sufficient Safeguard

VERY nearly the same situation arises if John Doe, a resident of New York, should appoint a Massachusetts trust company or a trust company organized under the laws of any other state to act as his executor or trustee. The property was Doe's. He has a right to make his own disposition of it and his own selection of his executor and trustee. Nevertheless, New York may well say we grant his right to make a will, we probate the will, we require the accounting, we must, therefore, accept some responsibility. This is certainly true in theory. In practice, however, such selection of a foreign trust company must be rare. Few trust companies will care to undertake such burdens and be responsible to an alien law with the details of which they can scarcely be familiar. Few testators will select foreign trust companies. Such cases will be confined to men whose affiliations have all been in the state in which the trust company is incorporated and who has gone to the other state originally for business reasons and has settled there. Would not all the responsibilities of the state of New York in the case of John Doe be adequately met if it required the foreign trust company to give bond with surety, unless John Doe himself exempted it from doing so in his will or unless the laws of the state in which the trust company is incorporated did so? I think it would.

Massachusetts Bills

IN the last two legislatures of Massachusetts, bills have been introduced to permit foreign banks and trust companies to act in fiduciary capacities in Massachusetts upon a reciprocal basis and these bills have contained the following restrictions:

(1) The foreign trust company must act in the same manner and subject to the same control of the court as an individual.[1]

(2) It must give bond with sureties unless excused by the will or by the law of the state in which it is incorporated; but the Court may upon application of any interested person require that such security as it deems proper be given, except in the case of a trustee.

(3) It must file with the Register or the Clerk of Courts a proper designation of an agent upon whom legal process may be served.[2]

(4) It must not have an office in Massachusetts, or in Massachusetts solicit its appointment.[3]

These bills would not subject the foreign trust company to the supervision of the bank commissioner nor to examination by the Bank Commissioner nor require it to pay any fee, excise or tax. The trust property would of course be subject to the same tax and in the same manner as if it were held by a Massachusetts trust company. There would be no requirement that it qualify as a foreign business corporation to do business in Massachusetts or that it file reports as to its condition or deposit securities with any state official. In other words, these laws would differentiate between a foreign trust company doing a banking business and a foreign trust company doing a fiduciary business. While they prohibit the first there seems to be no good reason why they should not permit the other in cases where the testator or the creator of the trust has himself selected the foreign trust company. Certainly those states which permit a non-resident to be appointed may upon like basis permit a non-resident trust company to be appointed. Of course if such an individual or such a trust company could be shown to be unsuitable it is expected that the Judge of Probate, the Surrogate, the Judge of the Orphans' Court or what not, would have jurisdiction to remove. The requirement that the foreign trust company should act in the same manner and subject to the same control of the Court as an individual seems to give all the protection to the beneficiaries which need be given to them in cases where the testator or creator of the trust has himself selected his executor and trustee.

It may very well be that this privilege should be extended to cases where the beneficiaries themselves all request a foreign trust company to act.[4] I do not think this stands upon quite as strong a ground and many of the states now having reciprocal laws do not so provide. This may be something which may very well come along later after the principle has been more generally adopted.

The bills presented in Massachusetts would permit a foreign trust company to act as executor or trustee under the will of any person whether or not an inhabitant, and similarly to act under a voluntary trust deed or a corporate trust indenture for any individual or corporation whether or not a resident of or incorporated under the laws of Massachusetts; but they would not permit a foreign trust company to act as administrator of an estate or

[1] That is the way in which a domestic company, a Massachusetts Company, must act. There is a question which was raised in the case of Commonwealth Atlantic Bank, in Massachusetts, whether those same restrictions and terms applied to a national bank acting as a fiduciary, and the court there pointed out that perhaps it did not. It seems to me that if a state is to grant these rights, it may very properly say, "you must subject yourself to the court exactly as our own organizations subject themselves to the court."

[2] Just why there is an exemption for trustee, I do not know, but there is in Massachusetts, as to domestic trust companies, and apparently that is of such long standing that it seems wise to leave it.

[3] The last part of that provision was inserted out of deference to the legislature, which had been trying and is still trying, this year, I am glad to say unsuccessfully, to limit the advertising by trust companies. I am rather inclined to think it causes more trouble to put it in than to leave it out, and next year I think it will be left out of the bill.

[4] To administer the estate of a person who died without a will, or to succeed an executor.

as administrator to succeed an executor, or as guardian or conservator for any person who was an inhabitant of Massachusetts. It was thought wise to begin rather moderately and then if the experience under the bills justified, the scope might later be increased.

These bills with their carefully drawn provisions and restrictions offer the relief which the situation needs and apparently afford all the safeguards which are needed.

The Courts, especially the Supreme Court of Massachusetts, say that the wishes and intention of the testator as expressed in his will must govern. They go to great length in construing wills and trusts to carry out his wishes as to where his property shall go. Many times it is equally important to carry out his wishes as to who shall administer his estate and who shall manage the trusts which he has created. Our legislatures should remember this and seek as little as possible to interpose unnecessary burdens and restrictions. Trust companies are more and more sought in these capacities because of their ability in handling the affairs and property of others. As time goes on, the necessity of permitting them a wider scope than the geographical boundaries of their own state will be recognized. The best, if not the only way to bring that about is to urge unceasingly the adoption of proper reciprocal laws and to explain also unceasingly how it will avoid unnecessary and hampering restrictions, how it will facilitate the conduct of business and that it will harm no one.

CHAIRMAN MCLUCAS: Has someone a specific question he would like to ask on the subject?

Possible Obstacles

MR. LITTLETON: Mr. Rogerson, have you found that obstacles in the way of reciprocal laws may be due to the attempts of the legislatures and the state courts throughout the different commonwealths to protect themselves from the extension of the authority of the Comptroller of the Currency and the various other Federal officials of the Treasury Department over trust funds?

For instance, several years ago in Pennsylvania we awoke to the fact that we were going to be in trouble with New York, because our local register of wills had refused to grant letters to a New York trust company. When we found it out, we had quite a talk with his solicitor. He said, "I cannot help it. Here is a statute that has just been passed by the legislature of our state." We looked it over and said, "Yes, Mr. Boyle, but that is to keep the hands of the Federal government off the control of estates in Pennsylvania. Our own Orphans Court, as you know, is very much afraid that in the case of an insolvency of a national bank acting as a trustee in the state of Pennsylvania, its entire assets including trust funds may be carried, bag and baggage, to Washington and their jurisdiction will be lost." He said, "That may be true, but, nevertheless, the terms of the act are such that we cannot grant letters to the New York Company." At the next meeting of the legislature we called the attention of the Banking Committee to the shortcomings of that law and it has been corrected. We have now re-established reciprocal relations, but I wonder whether in the attempt to keep the Federal government out, we may be keeping our sister states out also.

MR. ROGERSON: I think the fear of national banks doing what you suggest has made it difficult to get the legislatures to think intelligently about trust companies organized elsewhere. On the whole, however, the fear of a national bank is rather a wholesome one, because you can always say to the state legislature, "The national banks can do this, you had better give us the right to do it, if it is a proper thing to do, or we will all become national banks." It is a very strong argument but I think it can be overdone.

The national banks say they may act wherever they see fit to act, no matter where located. That is true, unless the state refuse to permit its own companies to act, which is what New Hampshire has done, as far as an executor is concerned. In New Hampshire, no trust company may act as executor and no foreign trust company—in the sense of a trust company organized outside of New Hampshire—may act as trustee. Possibly it may give a deed to real estate, but nobody knows.

Another Solution

JUDGE HERVEY: Mr. Chairman, I may be able to give you a sidelight on this. I hold no brief for the legislature, but having worked on the Legislative Committee of the American Bankers Association for many years, I know the attitude of the legislature on this question.

The Banking Committees of the Senate and House usually express themselves as feeling that a corporation organized in a foreign jurisdiction should not be allowed to come into the state and do business on a more favorable basis than the local corporation.

In my state, for example, a corporation must have on deposit with the State Treasury not less than $100,000 increasing, as its business increases, to not more than $600,000. It must pay a license tax, it must pay for examinations and be subject to examinations, and must conform to the laws of the state regarding the investment of trust funds and otherwise. If a foreign trust company comes into the state, it contributes nothing to the support of the state administration of banking; it gives no security, and does business on a far more favorable basis than the local domestic corporation, and that is the reasoning used by the legislature for forbidding foreign corporations from so acting.

The speaker said, "What are we going to do about it?" And he suggests a remedy which is very attractive, if it can be secured. There is another remedy, I think. If the attorneys and the trust officers are cognizant of the difficulties which lie in their path, they can clear away most of those difficulties at the time of the execution

of the instruments which are later to be probated or become effective as trust documents.

The small institution with which I am connected has property in twenty-seven states of the American Union. Over one million people have come to my section of the state within the last five years, many of whom have brought wealth, and many of whom have left real estate, stocks and bonds and other property in the states from which they have removed. So, we are daily confronted with this question of ancillary administration, and we uniformly recommend to our customers that they not only nominate an executor to act in the place of the domicile, but they also nominate a good trust company in each state in which they own property, in each state in which it will be necessary to probate the will; and to provide in the will that the executor shall respond to the domiciliary executor, and the estates in the foreign jurisdictions liquidated, that its assets and funds be transmitted to the place of the domicile, to be finally assembled and administered by the trustee in the jurisdiction of the domicile. It seems to me that that is the practical solution of our difficulty.

DANIEL S. REMSEN (New York): Sometimes I have found it desirable in such cases to have the testator transfer his foreign real estate to a corporation, of which he should hold practically all the stock. In that way, of course, the domicile of the corporation having been organized in his own domicile, he would have no trouble.

CHAIRMAN MCLUCAS: This subject, of course, would provoke long discussion, and we want to bring it to a close by a further word from Mr. Rogerson.

MR. ROGERSON: It is, of course, possible to avoid the difficulties, if you know them. I have not been so successful in getting information about them as, perhaps, California has. If you know where the testator is going to have property, you can obviate the difficulty just as you can in a corporate bond indenture. While that is the thing to do and the law stays as it is, it does not remove the trouble which, it seems to me, is wholly unnecessary. If it be possible to find some universal belief as to what proper protection is, we can break down the barriers between the domestic trust company and the foreign trust company, and we will not have so many different and confusing laws. A uniform reciprocal law might then be the result.

Use of Canadian Companies

CHAIRMAN MCLUCAS: There is a gentleman here representing a trust company in Canada, who made a suggestion that perhaps would be worth considering for a moment, if you would like to say something about that, Mr. Stanger.

ROBERT STANGER (James T. Stanger Co., Montreal, Canada): The thought occurred to me that the word "foreign" was rather unusual in the last paper, I thought it only applied to people outside the United States. But with so many people going down to Florida, from Canada and California, it seems that the use of Canadian trust companies by the American trust companies should grow, to liquidate estates or property left behind. We have had some experience in that, and we have found that the knowledge of Canadian facilities is very limited among the American trust companies. If there are any questions anyone has to ask, I will be pleased to answer them. If anyone has any Canadians now residing near them, making wills, I would recommend that you suggest that they give you full information of their Canadian assets. If you have any cases in hand now, that you want any points straightened out on, I will be glad to help.

CHAIRMAN MCLUCAS: Mr. H. F. Wilson, Jr., Vice-President of the Bankers Trust Company and Chairman of our Committee on Review and Survey of Trust Securities, will now speak to us.

MR. WILSON: Mr. Chairman, Ladies and Gentlemen: It is always a very great privilege to me to come here and talk to this group, because we speak the same language. It is the language of service; it is the language, it seems to me, of the greatest business in the world, constructive service to our fellow men. That is one of the things I like about our trust business, that it is just simply selling service, and I think, in line with the subject, we would do well to stick to that principle and simply sell service.

This business which is, in most cases, our life work, has always appealed to me, primarily on that basis. The greatness of the service which is rendered by trust companies undoubtedly cannot be measured, and while I have come before you this morning simply to read a report—and Mr. Mershon knows how much I like to *read* anything—, it is something which will have to be read, because it is a report of a Committee, and in speaking for the other members of the Committee, I would naturally wish to say it to you just the way they collaborated with the chairman in writing it.

The Committee of the Trust Company Division of the American Bankers Association, on Review and Survey of Trust Securities, is composed of Mr. Harold D. Bentley, Vice-President of the Guaranty Trust Company of New York; Mr. W. M. Baldwin, Vice-President of the Union Trust Company of Cleveland; Mr. C. W. Fenninger, Vice-President of the Provident Trust Company of Philadelphia; Mr. R. B. Fisher, Trust Officer of the Old Colony Trust Company of Boston, and Mr. S. S. Liggett, Vice-President of the Union Trust Company of Pittsburgh, and the Chairman.

I will proceed with the reading of this report, which is in the nature of a preliminary one, and which has not attached to it the necessary forms which will later be provided. The report will later be published and made available to any of our members who may wish to have it, with the forms.

Review and Survey of Trust Securities

Preliminary Report of Committee on Review and Survey of Trust Securities of the Trust Company Division, American Bankers Association

By H. F. WILSON, JR.

Chairman of Committee and Vice-President of Bankers Trust Company of New York

YOUR Committee was appointed to formulate a specimen or model plan for the periodical survey and review of trust securities accompanied by the proper and necessary forms. It was intended that the plan should be designed to meet the needs of a small trust company as well as a large one. If it could not be termed "a model plan," it was to be at least a specimen plan.

It was proposed that this Committee should be selected from among the heads of trust departments in the older and larger trust companies in the East, who have worked and experimented in the field of trust investments the longest and most successfully. Consequently, your Committee naturally felt complimented in being selected to make this report, although there are, undoubtedly, many others in all sections of the country who would have qualified under these requirements.

Highly Specialized Service

AT the outset it is, of course, well understood that the investment of trust funds is a highly specialized service. In order to produce the best yield compatible with safety, to comply with the law and with the provisions of the various trusts, it requires not only an experienced trustee, but also one with a thorough knowledge of securities. While in many states, unless otherwise authorized, trustees are confined to investments legal for savings banks, the conditions obtaining in the investment of trust funds are quite different. A savings bank invests its funds en bloc for the benefit of the entire body of depositors; a trustee must invest the funds in its care in the light of the requirements of each trust, which means taking into consideration all the special factors involved in each case. This is so whether or not the trustee is restricted to the so-called "legal list."

It has been for many years the special business of trust companies to administer trust funds. This responsibility and privilege has now been extended to banks. It is assumed that only a corporate trustee can have the combined advantages of permanence, responsibility, experience and availability necessary to properly handle, supervise and review the investment of trust funds, although individuals, of course, are often associated as co-trustees.

Permanent Trust Investment Committee

HAVING these principles in mind, your Committee has given considerable study to the subject and has compared the experience and methods used by its members over a long period of years. We have come to the conclusion that, as far as possible, a permanent trust investment committee is desirable to properly handle this important duty, either in a small bank or trust company or a large on. A constantly changing committee can hardly become familiar with the problems nor function consecutively and smoothly. The personnel of the committee will be determined, of course, by the conditions obtaining in each institution, although it would seem advisable to have at least two of the senior officers as permanent members of the committee and always at least one director.

In some institutions more officers or more directors may be desirable, depending largely upon their qualification to pass upon security values and questions involved in making trust investments such as safety, yield, maturity, diversification, taxability, marketability, etc. Corporate trustees cannot afford to do otherwise than avail of the best talent they have in selecting those of their officers and staff who are charged with the important duty of making and reviewing trust investments.

Selection of Committee Members

IN selecting members for a trust committee it is suggested that preference be given to the banker and the lawyer. There are usually very many legal questions in connection with investments in a trust and your committee has found the advice of gentlemen of legal point of view extremely helpful. However, each company should very carefully make its own selection of a permanent trust investment committee, perhaps with an additional member chosen from the board of directors, and serving in turn for a month or longer.

It is suggested that there should be a trust investment committee meeting at least twice a month and in most cases, once a week, and it is assumed that all investments will be carefully analyzed and all factors considered before any investments are made. It will be most helpful to have the data for study in advance of each meeting, together with the minutes of the previous meeting. All trust investments should be continually reviewed from every angle.

List of Acceptable Investments

ALL this may seem more or less academic, but too much emphasis cannot be laid upon the necessity for care in making investments, in the light of the re-

quirements of each specific trust. It is also the recommendation of this Committee that either the executive committee of the bank or trust company, or at least a directors' advisory committee, should approve all recommendations of the trust investment committee before any purchases are made. This might seem to involve some slight delay, but we believe the importance of the matter fully justifies this procedure.

In order to reduce this delay to a minimum your Committee recommends that a list of high grade bonds be carefully prepared suitable for trust investments and that such a list be submitted to the executive committee of the trust company or bank, and after obtaining its approval, the officers charged with the investment of trust funds might then be authorized to make purchases from such list, upon approval of the trust investment committee, without first referring the proposed investment to the executive committee for approval. However, it is recommended that all such purchases should be reported to the executive committee.

It is important that the Committee should have a secretary whose duty it is to keep a complete record of all recommendations for purchases or sales, and the reasons for the same, as it may be necessary at some later date for the corporate trustee to justify its actions either in buying, selling or holding. Of course, it is also necessary to maintain other complete records showing the exact holdings of each trust, restrictions on investments, tax problems, if any, residence of the beneficiary and many other details which are set forth on the accompanying forms. In reporting to the trust investment committee, it will be necessary to steer a middle course so that the reports of the statistical department will not be too long and on the other hand not too brief, and of course "red tape" should always be avoided.

Sale and Reinvestment

BECAUSE the memoranda prepared for the trust investment committee plays such an important part in the investment of trust funds, a few words of amplification may be of interest. An ordinary committee memorandum covering the sale and purchase, and possible retention of securities in an individual trust account should contain the following information, in addition to the recommendation: the name of the account; the date established, the investment provisions, the date of determination, if specified, whether or not premiums are amortized, etc. The recommendation in the case of a sale and reinvestment should show the securities to be sold, with their inventory and market prices, realizable values and present income and the securities to be purchased, with their market prices, cost and income, both for each security and the total. When the retention of other securities is recommended they should be listed with their inventory and market prices, and, of course, in all cases the total par value of bonds or the number of shares of stock, etc., should also be shown.

The other type of memorandum which we might call a situation memorandum consists of a statistical report of the company being considered and a table showing those of its securities held, their markets, the accounts that hold each issue, their inventory prices, and very briefly the investment provisions of the accounts. Specimen forms of these are also annexed to this report.

"Don'ts" to Be Observed

WHILE your committee hopes this report will be constructive, possibly the following "don'ts" may be worth considering:

1. Don't establish a policy of investment unless you are willing to live up to it.
2. Don't buy securities contrary to the terms of the trust.
3. Don't forget that there are usually two people at interest, the life tenant and the remainderman.
4. Don't forget that a trustee has a moral responsibility as well as a legal one.
5. Don't buy a short term high coupon bond at a premium in an account where you do not amortize. This is robbing the remainderman for the sake of the life tenant.
6. Don't buy low coupon bonds on yield to maturity without considering the current income, which is what the life tenant receives.
7. Don't fail to diversify investments in a trust as to security, industry, location and maturity.
8. Don't buy too many different issues in your various trusts. If a bond is a good investment for one account it should be for many others.
9. Don't buy long term investment bonds with a low yield when good short term bonds and mortgages are available. You can reinvest permanently, later on, when rates are higher.
10. Don't forget that a badly handled trust injures not only yourself and your company, but also every other trust company.

In New York the Personal Property Law provides that no trustee shall purchase securities from himself. This is a principle which it is recommended should always be scrupulously followed both in buying and selling, as your Committee believes that subsequent embarrassment may be avoided by following this principle. In New York (and we understand also in other states) it is permissible to purchase participations in bonds and mortgages, which should also be based on conservative appraisals.

There is, of course, a great deal more which might be said relating to the principles and methods of trust investments. There are a number of excellent publications which deal with the subject of trust company administration, in general, including facsimile forms. Among these might be mentioned—"Trust Companies" by Clay Herrick; "The Modern Trust Company" by Kirkbride and Sterrett; "Wills, Estates and Trusts" by

Conyngton, Knapp and Pinkerton, and with more particular reference to the subject of this report, "Trust Investments" by Frank C. McKinney of the New York Bar. All of these books and undoubtedly many others are well worth reading and are, naturally, much more complete than a preliminary report of this nature could possibly be.

That, in a few words, is the preliminary report of the Committee, which will be submitted to the Executive Committee of the Trust Company Division. We mention several books in this report and I imagine many of you had the privilege of hearing, last night, Eddie Guest. I do not know how many of you have read his book, "A Heap o' Living," but if you have not, it is well worth reading. It contains one thing that sums up, it seems to me, the attitude which I am sure you all have, and I would like to leave the thought with you in closing.

"FAITH

"I believe in the world and its bigness and splendor
That most of the hearts beating round us are tender
That days are but footsteps and years are but miles
That lead us to beauty and singing and smiles:
"That strangers are friends whom we some day may meet
And not all the bitter can equal the sweet.
I believe in the path which today I am treading;
That I shall come safe thru the dangers I'm dreading,
For the leaf on the tree and the thing we call Man
Are sharing alike in this Infinite Plan."

(Applause.)

CHAIRMAN MCLUCAS: I am sure we out-of-town bankers are getting thrills out of some of the things that come from the platform from these New York bankers. I remember one, the other day, had something about smiling, and now Mr. Wilson comes forward with a beautiful piece of poetry about tender hearts. I think that is a different revelation of a New York banker to these Westerners, and is very nice. (Laughter.)

The next subject is, "Escrows and How We Handle Them," by Mr. E. L. Farmer, Vice-President of the Title Insurance and Trust Company, Los Angeles, California. Mr. Farmer has come a long way to present this subject, and you are, I know, going to be very greatly interested in his presentation of it.

Escrows and How We Handle Them

By E. L. FARMER

Vice-President, Title Insurance and Trust Company, Los Angeles, Cal.

MR. CHAIRMAN, Ladies and Gentlemen of the Convention: Not knowing just how you handle escrows here in your jurisdictions, nor to what extent they are used, I felt quite relieved that the title given to my talk was, "Escrows and How *We* Handle Them." That relieves me from the responsibility of attempting to tell you how to handle them. All I have to do is to tell you my story, as I see it.

You know how you handle escrows here and you know the extent and size of your escrow departments. That we may be on an equal footing on that basis, I shall give you some idea of the size of our escrow departments. In the particular escrow department over which I have jurisdiction, we employ as many as 140 escrow clerks and handle what we think is an enormous amount of business. The amount of the business that can be handled is limited by the quarters in which we are situated. That has been relieved to a great extent by all of the banks in our section—Los Angeles County—establishing escrow departments within their banks, so that now the escrow business is pretty well scattered throughout the Southland.

Origin in the South

THE escrow business was started there upon the belief that land was perhaps the foundation of all wealth and the one commodity which all people desired to possess, own and control, and we believed that if some way could be devised by which the acquiring of real property could be made easy and safe—as easy, perhaps, and as safe and convenient to deal with as stocks and bonds—it would become a popular game and people would be led to invest in homes and places of business. Whether we have succeeded in the purpose we had in mind, remains to be seen; but I wish to call your attention to what I honestly believe to be true, that in no place in the world has the selling of real estate developed to as high a science as it has in Los Angeles County, California. When I began business there, in 1899, Los Angeles boasted of a population of 90,000; today, it is in excess of 1,250,000, representing steady, consistent growth. How much of that is attributable to the facilities offered by the investing public for the handling of real estate remains to be seen, and I leave you to draw your own conclusions.

Remember, California, itself, is a large state, but the development in the sale of real estate and in the building up of its population and its industry has been confined, to a great extent, to that one section embraced within Los Angeles County. There are other counties to the south that have just the same climatic conditions and just the same land or soil; there are others to the north,

equally as well graced with those qualities, and yet the development has been the greatest in that one locality. I maintain that the increase has been largely due to the facilities offered by escrow departments.

Aided by Legislation

THE legislatures and law making bodies of every state have done all within their power to make the holding of real estate attractive and to protect the interests that people have therein, and in connection with that, we have, of course, the recording law. We have two kinds of notices of a man's interest in property: actual notice and, as the records imply, constructive notice. Every man is charged with the knowledge of all that the public records disclose, regarding the interests and claims of parties as to real estate.

Whenever a real estate transaction is being conducted, there is necessarily a lapse of time between the time when a buyer and a purchaser are found and the time when the transaction can be completed by the turning over of the instruments and the money. Numerous plans have been devised, by contracts, receipts, agreements of sale and otherwise, to cover that intervening time. In some localities, they have what they call settlement days or dates, a time set in the future when the parties to the transaction or their legally appointed representatives will call and close the transaction, after the evidence of title has been furnished to them.

The escrow department, properly conducted, does away with the necessity for all of that. The parties meet once in the office of the escrow holder, and then and there deposit the money and the instruments necessary for the consummation of the transaction; a title company examines the records as to the condition of the title to the property, and if, after the examination of the title has been completed, it is found that by recording the instruments that have been deposited in escrow, the title will show in it the condition required by the purchaser, nothing remains to be done but for the title company to record those papers and the escrow holder to pay out the money in accordance with the written instructions. No meeting is required afterwards, and no delay is suffered in the closing of the deal, after the actual completion of the examination of the title.

Definition of Escrow

THE question is often asked, "Just what is an escrow?" Our code says that where a deed is deposited with a third person, to be delivered on a certain event, such deed is said to be in escrow. That isn't very much of a law to start your work on, to judge what your rights, benefits and privileges are and, perhaps, to determine your course of action and your liability in case of a failure to comply with the instructions.

There are some laws that are built by custom and practice. There has been developed a law of escrows based upon custom and practice. It falls, perhaps, partly under the law of agency, partly under trusts, and partly under contracts. But taking them all together, there have been a number of cases in our Supreme Court which have definitely determined that an escrow, if properly drawn, is a binding contract. We call those perfect or binding escrows.

The definition that I should give of an escrow based upon that practice is that when two or more persons deposit money and instruments with a third person, to be delivered on a certain contingency or the happening of a certain event, such money and instruments are said to be in escrow; and the person with whom they are deposited is said to be the escrow holder.

Opportunities for Service

MR. WILSON, on the platform, this morning, said that all you have to sell is service. Now, if all you have to sell is service, then I believe that the development of an escrow department in all your institutions is of prime importance to you. You have, many of you, established in your different banks and trust companies, information bureaus as to travel, statistics, and even in some cases to the buying of theatre tickets. That is a service, it is true, to your customers, but you are not selling good will, you are not selling confidence, you are not selling it to new persons.

When people come into your office to leave an escrow, there is in each transaction brought in, at least one or two new sides to the transaction, people who sit down before you, discuss their cares and troubles and their problems with you, receive instructions and advice, if you will, from you, are guided in their entire transaction by what you tell them. And if you tell them properly, if you have in your employ men who instill confidence and are worthy of the confidence of your customers, you are making friends for your particular bank or trust company. If you have in your employ men who are not worthy of the confidence or are not able to instill confidence in the minds of your customers, then you would be better off without an escrow department.

Attitude of Lawyers

THE question is asked frequently, do the lawyers look with favor upon a banking institution or any other such institution conducting a title department? I should say that we have found from experience that after they learn the benefits that can be derived from an escrow department, properly conducted, that the attorneys, themselves, are the first to advise their clients to place the matter in escrow.

For example, one of the leading attorneys in Los Angeles, not connected with us either directly or indirectly, had a client who came into the escrow department for the purpose of buying property of considerable value, and after the instructions had been drawn, read to her and

handed to her to read again, said, "But I can't sign these until my attorney has approved them." I said, "Very well, that is satisfactory to us." So, she went to her attorney and brought him up there, and he said, "Did you tell Mr. Farmer all about the deal exactly as you told me?" She said, "Yes, I did." "Then," he said, "sign the instructions." "But," she said, "you have not read them, yet." He said, "I know this, and it is my advice to you. Those instructions are drawn better than I could have drawn them, myself." Now, that is confidence. When you instill that confidence into the attorneys, then you will make friends for your bank.

When you have those people coming to you from day to day, as they do come to all well-established escrow offices, and ask you to advise on every turn in the road, in dealing with real property, then you have people who are going to support your bank and trust company, who are going to leave living trusts with you, who are going to leave their property in trust to you to be handled after they are dead.

That is the main purpose and the only purpose for which I believe you should handle escrows, that is to sell your own selves and your service to your customers.

Knowledge of Real Property Law

TO be able to talk with and advise your customers properly, it is necessary that those in your escrow department, particularly the head man, should understand pretty well the laws of real property. As one of the speakers said, yesterday—when the subject of life insurance was discussed in connection with trusts—that the ideal trust officer should know more about the law than the lawyer, and more about the life insurance than the life insurance man, himself, and that is true about the handling of escrows. It is not a "slam" on the attorneys in any way; you know that if you specialize on one particular branch of the law, even though you are not a lawyer, you will be able to teach a lawyer tricks in that line that he had never dreamed about.

We do not practice law; we do not attempt to practice law; we do not ever do anything to prevent a lawyer from getting a fee or a case, when his services are required. But, we see no more reason why a lawyer should object to a trust company escrow officer's telling a man what his rights and benefits are, and helping him to carry out a real estate transaction of that nature, than to his going down to the grocery store to help him buy groceries or to the automobile agency to help him buy an automobile. In fact, I think his services would be much more likely to be required in the buying of an automobile, especially on the installment plan, than it would in the transaction of the real estate deal.

Your clerks must be men who are capable of handling their work. They must not only have the required knowledge, but they must have that peculiar frame or bent in their nature that makes it possible for them to gain the confidence of the people and keep it. They must read; they must understand; and they must carry out the terms of the written instructions.

Two Kinds of Escrows

NOW, we have two kinds of escrows, that which is commonly called the good faith escrow and, second, the perfect or binding escrow. An escrow based upon good faith is an escrow where one or more of the requirements necessary to the making of a binding contract are lacking; either all of the people whose signatures are necessary are not available, or some of the subject matter is missing, descriptions are indefinite, or something must later be supplied. Such an escrow as that is revokable at any time, up to the time that it has been acted upon and the instrument filed or delivered.

Wherever there has not been a perfect meeting of the minds, the escrow is revokable. Where there has been a perfect meeting of the minds, the instructions having been signed by all of the parties whose signatures are necessary to the making of a contract, such an escrow is not revokable, except after the completion or arrival of the time limit placed upon the escrow, and then only by the party to the escrow who was not in default. That has been held by our Supreme Court to be true, and there is no reason why it should not be true.

In some jurisdictions, it seems that it would be advisable that the instructions be written on one sheet of paper or all sign the same set of instructions, but with us it makes no difference; an escrow instruction may come in from six, seven, eight or ten different angles. If they all select the same common escrow holder and tie in by appropriate language to the instructions of the others, it makes a perfect and binding contract, if you have otherwise all the essentials requisite for a contract.

Does Escrow Department Pay?

WHETHER it is a paying or a losing proposition as to fees, would be a matter for you to determine. We conducted an escrow department for years at a loss, and still considered that it paid. At the present time, we make the escrow department pay its own way.

The escrow fees are a minimum charge of $10.00 for a small deed, and run at the rate of one-tenth of one per cent, which is $1 for $1,000 on all sums over and in excess of that minimum charge. The largest single fee I remember having collected for an escrow was a little over $2,600. That, however, was a large transaction that involved a good deal of oil lands located in the San Joachim Valley, and it was necessary for three of us to go there to hold meetings with boards of directors and others, in order to close the transaction. The escrow business will pay, if it is properly conducted, and it will pay in the good will and in the service it renders to your customers, and the business that it brings to you and to your trust department.

CHAIRMAN MCLUCAS: You have heard from the

foremost authority on this subject in this country. I wonder if you thought the subject was dry, aside from what he had to say about California. But, at the very last, he touched upon a point that would be interesting and would make you very envious, if you knew more about it than he told you. He says they make it pay. My relations with banks and trust companies leads me to wonder whether we can make it pay. The fact that he told you no more, makes me feel he is reluctant to tell you, for fear you might come to Los Angeles and go into competition. But Judge Hervey is less conservative, and I think, in a few words, he can tell you something of whether it makes a profit, and it will make you want to study into your own situations to see if there is a way for escrow departments, following the Los Angeles plan, if the Judge will do that, I am sure it will be of interest to you.

A Result of Title Laws

JUDGE HERVEY: There are two phases of trust business which have been developed in California, not widely known in the balance of the country, they are the sub-division trusts and escrows. The California trust companies have the sub-division trusts as a "meal ticket." It is almost impossible to sell a piece of property out there on contract, unless the contract is issued by a trust company. The average purchaser will not trust an individual eventually to convey a good title, free of mortgage or encumbrance, but they know the trust company will perform, and, therefore, all these thousands and thousands of parcels of property have percolated through the books of trust companies with the resultant profit, and no buyer, so far as I know, has ever been disappointed in receiving the title for which he bargained and for which he paid.

The escrow business has been developed probably as a result of our title laws. We do not use warranty deeds. The matter of abstracts of title is a thing of the remote past; it belongs with the dodo and the fundamentalist. (Laughter)

When I first began the practice of the law, much more than a quarter of a century ago, many attorneys in my city examined abstracts of title and some few of them used them as "meal tickets." I presume no attorney in Los Angeles—and there are some four thousand lawyers in the town—for the last twelve months, has examined a single abstract of title. The title companies give us certificates of title which certify the condition of the title; it is a lawyer's opinion, backed by the capital of a responsible concern. Copies of deeds, judgments, homesteads and all that kind of thing in connection with titles, we never see and know nothing about.

A Specific Example

I WILL give you a simple example of an escrow: Mr. Smith owns a house, Mrs. Jones wants to buy it; she agrees to pay Smith $10,000 for the house, Smith says, "All right, I will take the $10,000." Smith goes into Mr. Farmer's trust company, the Title Insurance and Trust Company, or comes preferably—if they know their business very well—to the Pacific-Southwest Trust Company (laughter), and Smith delivers to Mr. Escrow Clerk a deed to that house, conveying the property to Mrs. Jones. Mrs. Jones comes in with Smith or, at another time, with her husband, her son, her lawyer or alone, she gives him the $10,000, Smith's instructions say, "You deliver this deed to Mrs. Jones when you have received for my account the sum of $10,000, and you use the $10,000 to pay Mr. Stiles a commission of $250, the escrow fee of $10, pay for the certificate of title from Mr. Farmer's title company, pay a street bond of $210, pay a mortgage to the bank of $2500, and hand me the balance."

Mrs. Jones says, "Here is my $10,000. You pay that to Mr. Smith, when you have a deed from him and a certificate of title, showing the title to Lots 2 and 3, in Block 1 of the Sunshine Tract, to be vested in me free of all encumbrances."

Now, the escrow clerk has the money and the deed. He gets a report from the title company, finds out what the encumbrances are, pays them off, directs the recording of the deed, gets the certificate of title and hands the money to Smith and the deed to Mrs. Jones; he has earned his $10, and both the people go away satisfied.

Mrs. Jones says, "I like you, Mr. Escrow Clerk, do you do a banking business?" And he says, "Yes, our New Account people would be awfully glad to see you," and she goes down and opens up a little account. The New Account person says, "Did you just come to California, Mrs. Jones?" She says, "No, I have been here for sometime." "Have you ever been to our Trust Department?" "No." "Well, if you will go upstairs, they will give you a great deal of information about your life insurance, your children, and any information you may desire along that line; and the Safe Deposit Department has a safe place for this deed."

When Mr. Smith gets his $10,000, less the fees, it is suggested to him that the bank is a good depository for those idle funds until he wants them for a reinvestment. One hand washes the other, and one element of the business feeds another.

I imagine Mr. Farmer's company, today, has on deposit in the banks of Los Angeles, of escrow monies pending these transactions, not less than $10,000,000. I imagine there is a $10,000,000 daily balance carried by that company in the banks. And I will tell you a secret about that—the banks pay no interest on those deposits. (Laughter.) Because Mr. Farmer's company does not make a secret profit on trust funds—and no other company should—, and if it received interest on deposits, it would be an interminable task to apportion those interests among all these different escrow people.

This is a simple escrow, of course; they grow into great magnitude, but the average is of that character, and

it gives protection to the seller, it gives protection to the buyer, all these liens and difficulties are wiped away; the escrow boys understand real estate law; the bank has rendered a service at a very low cost, and, in nearly every case, makes one, two or ten friends, and that is what we are all seeking. The escrow business is not a highly paying business in itself; the escrow business, if properly managed, after a time will carry itself and will make some profit, but not a large profit. It is one of those activities that creates an indirect profit.

CHAIRMAN MCLUCAS: We are going to close the morning session by this presentation by Mr. Fred W. Ellsworth, Vice-President of the Hibernia Bank and Trust Company of New Orleans, who will lead a "Symposium on Advertising and discuss the subject of Salesmanship Cooperation by Officers and Directors."

Symposium on Advertising and Salesmanship Cooperation by Officers and Directors

By FRED W. ELLSWORTH

Vice-President, Hibernia Bank & Trust Company, New Orleans, La.

MR. PRESIDENT, Ladies and Gentlemen: I want to take this opportunity of paying a well-earned compliment to those who are responsible for arranging this Mid-Winter meeting. I like to think of these conferences as fiduciary clinics, in the great "University of Finance and Banking," where members of the class come together every year, from all parts of the country, and some of the members are brought up on the platform here to make diagnoses, prescribe remedies and, perhaps, perform operations. To carry the figure on just a step farther, I want to remind you that only a few years ago when, like the medical profession, the trust companies were too dignified to tell the people of their community that they wanted business, people who wanted service from the trust companies—and there were not as many trust companies then as there are now—had to seek out the trust companies in order to get that service. I am glad to say that today, because the parallel has been broken and the trust companies are willing to tell the people of the community what kind of service they render, people do not have to seek the trust companies, for the trust companies are seeking them.

As one of those in the class who has been brought up here today to perform an operation—or to make a diagnosis, I have been asked to look at some of these "patients" (referring to the advertisements on display from several trust companies) that have been here the last couple of days, and comment upon them, favorably or unfavorably, depending upon how they have struck me.

I was happily disappointed in looking over these "patients" to find that not very many of them are sick; they are a very healthy crowd. Most of them need no diagnosis, no remedy, and none of them needs an operation.

Analysis of Advertisements

I AM going to begin by commenting upon the advertisements of the Guaranty Trust Company. They impress me as model trust company advertisements, for the reason that they tell a story, briefly and to the point. I think an advertisement or any means for the purpose of obtaining business for the trust companies should be of such a nature as to make it very easy for the prospect to understand or act upon it. The great bulk of the people are not the least bit interested in our service. They should be, we know, but they are not. And so, in order to reach this relatively small audience—we must talk to them in terms which follow the lines of least resistance. Therefore, when an advertisement like these on my right appears in the newspaper, it is going to have the largest possible number of readers, because it is brief, to the point, well displayed, and discusses but one subject. Not all those readers will act upon that message, but they are going to read it.

The two pictures at my right, which are the product of the Union Trust Company, of Detroit, are also ideal advertisements, for the reason that they are pictorial. As a rule, a picture has a far greater appeal than plain, cold type. I understand from Mr. Berry, who supervises the advertising of the Union Trust Company, that these are going to a very select list in the City of Detroit, perhaps only two or three thousand, a hand-picked list of one hundred per cent prospects. The message is just long enough and just inconspicuous enough to appeal to a prospect for trust business, because each of these pictures has a very distinct message.

Now, here is one advertisement that needs perhaps just a wee bit of an operation. I shall use the "scalpel" carefully. This advertisement of the Fidelity Union

Trust Company has altogether too much reading matter in it—but let me remark parenthetically that most of the advertising of the Fidelity Union is good, judged typographically, editorially and pictorially, as well as from the standpoint of new business, because I understand they get very fine results from their advertising. If you are advertising a mail order proposition, you well know that mail order advertising is just full of various subjects in fine type, so fine that you have to put on double-powered spectacles to read it, but, it gets results! The reason for this is that it appeals to the largest possible audience, because everybody in the country is a potential prospect for a mail order house, particularly those residing outside the cities. But my criticism of this advertisement is that there is too much reading matter in it; about ninety per cent could very well be cut out.

The other advertisements here of the Fidelity and of the Wachovia Bank and Trust Company of Winston-Salem, and the Industrial Trust Company of Providence, seem to me to carry out the idea of an ideal public presentation. They have the subject or title, the discussion, and the signature. The title is one that appeals; the discussion carries out the idea conveyed by the title, and the signature tells who is talking.

The Equitable Trust Company of New York puts out probably as beautiful examples of trust company advertising as can be seen in this country; they are typographically, pictorially, and editorially excellent.

Let me read one of these: "That is where we used to live." The widow and her litle children are standing in front of their old home—a beautiful one—the inference being that father who had died did not make proper provision for the handling of his estate, with the consequence that the widow and half orphans are compelled to leave their fine home and seek a modest home elsewhere. "He left a home worth $200,000, but did not leave a will." Well, any man who has a wife and children is likely to be appealed to by that little message; and if appealed to, he will want to know more about it. If he wants to know more about it, there is the whole story at the left. The advertisement itself is brief, so brief that he can see it almost at a glance. If he wants the details, they are right there, handy and complete. If he wants still more information he can get it by writing for the booklet referred to in the advertisement.

I would say that the Chatham-Phoenix advertising, in the main, is good. But I think some of their advertisements contain too large a "dose," too much for the average person to read. The longer and more involved the subject matter of the advertisement is, the smaller the audience. If someone reads your message and then comes in to see you, your objective has been accomplished. The comment made on the Fidelity and the Guaranty advertising would apply here. Each has an interesting title, a brief discussion, and a conspicuous signature which tells who is talking.

Now all of this advertising matter is merely background to the work that we in this big class are attempting to do. It establishes the contact between the general public and the officials of the trust companies. This advertising cannot produce direct results to any great extent. We have to follow up this preparatory work by seeing the prospects personally.

Getting Officers and Directors to Cooperate

THE subject that has been assigned to me is a "Symposium on Advertising, and Salesmanship Cooperation by Officers and Directors." A day or two ago an interesting "interne" in this class spoke about the cooperation of officers and directors, and said, "It just cannot be obtained." He is right—in a great many instances it cannot be obtained. But I want to tell you, in a few words, how it works in our shop.

We have held a series of interesting, brief, educational conferences, participated in by our executive officers, and at these meetings our trust officer or one of the assistant trust officers has acted as a teacher. Most of us, primarily, do not know very much about trust business, because the average executive bank officer is a commercial banker. However, as a result of these meetings, with our trained trust department officials, the rest of us who did not know so much about fiduciary banking before, have learned a great deal. As a consequence, we are assigned prospects from the trust department, and we meet periodically to report what we are doing with them. Sometimes, our assistant trust officer who is in charge of new business for the trust department, is most annoying. For instance, I have one of our directors on my list whom I have been after for nearly a year. About every so often I find on my desk a little note from the prodder saying, "What have you done about So-andso?" Well, I have done something, but I haven't landed the fish yet. He has not come in though he has been nibbling around the bait since last winter. He will take the hook eventually!

Now, in order to make this work concrete, and continuous and resultful, and so that we may enjoy the constant cooperation of our directors, our board is divided into three teams, each with a captain. Three senior officers act as a Committee of Judges to handle all disputes as to credit for new business, etc. Credit for new accounts means something to the directors, because substantial prizes are awarded at the end of each year to the teams making the best records. Those three teams are working and, I can assure you, they are producing results!

The officers, who number thirty-six aside from those who are on the Committee of Judges, are divided into four teams of nine each. Each director and each officer is supplied with three sets of cards; the first, known as "prospect cards," are used by the solicitors for the purpose of having prospects exclusively assigned to them;

the second are "report cards" on which solicitors make full reports of calls made so that the New Business Department will understand the situation with regard to each prospect; the third are "new account cards," the purpose of which is obvious. The paths of these officers and directors are constantly crossing in the course of their work. This is a very good thing, as, after a prospect has had several calls from different men from the same bank, he naturally concludes that the bank is a pretty live institution.

The results from this kind of cooperation are excellent; the cooperation is intelligent and continuous, even though our good friend, Mr. Chambliss, asserted very definitely yesterday, that it is impossible to get the cooperation of the officers and directors for the solicitation of trust business. We have had results already this year; we had results last year; we had results the year before. We are not setting the world on fire; we are not accumulating a trust business that is infinitely larger than that of the other banks, but we are getting results and much better results than we should get if we did not have this cooperation of the officers and directors.

Mature Men Necessary as Solicitors

I WANT to say just a word concerning what Mr. Chambliss said about the employment of young men as solicitors. We have had some experience in that respect. Young men who have had two or three months' training for trust work, as far as we are concerned, just cannot "bring home the bacon." They have not a large enough acquaintance; nor the experience. They cannot have the knowledge, because three months' training for trust business is not long enough. After a rather disappointing experiment with young men, we decided to eliminate them and to call on the more mature men in our official staff. And so for some time we have been using those experienced, mature men in our organization who have a combined acquaintanceship among trust prospects, practically comprising the entire town. When they need a technical knowledge of details in their solicitation, they call in the trust officer or an assistant trust officer. He is the man after all who is charged with the job of getting the name on the dotted line.

The trust officer and his assistants, of course, are trained men. They know the details, they know the problems that are presented; they know the answers to these one hundred questions that were discussed here yesterday by Mr. Stephenson. The general officers of the bank—or most of them—cannot know the answers to all of these questions, and any or all are likely to be asked by a prospect. For that reason, we believe the logical thing to do, in the solicitation of trust business, is to fall back for the final "punch" on the trained man in the trust department, who is equipped by experience and knowledge to meet any situation that arises, and not only answers questions but ask others, as well as propose plans which will be of constructive benefit to prospects.

Mr. McLucas said the other day, that in the cultivation of the field in which we are working the surface has not yet been scratched, and that, of course, is very true. It has been scratched in New York, to some extent; it has been "roughed up" some in Chicago, Boston, Philadelphia, and a few other cities, but in most of the communities of the country, it is lamentably true that the development of trust business has hardly yet begun.

A Wonderful Service

WE know we have a service to perform for the people of this country, and it is a wonderful service; a service that saves heartache, conserves estates, produces as much happiness as can come to those whose loved ones have left them and systematizes the care of wealth. It is a service that everybody should avail himself of and yet everybody does not. We know how good it is, and they do not. Isn't it therefore our job to use methods like this advertising, followed up by the right kind of correspondence, personal solicitation and convincing arguments from experienced men, in order that we may get for ourselves the maximum of business for our trust companies and, by the same token, give to the people in our communities the maximum of protective and constructive fiduciary service, that they are entitled to and should have.

CHAIRMAN MCLUCAS: I know that if we had the time, this presentation would provoke long discussion but we want to give an opportunity to Mr. Brown, who has to catch an early train, to present the subject, "Important Factors to Be Considered in Developing Insurance Trusts." Mr. W. H. Brown, Assistant Vice-President of the Old Colony Trust Company of Boston.

Important Factors to Be Considered in the Development of Life Insurance Trusts

By W. H. BROWN

Assistant Vice-President, Old Colony Trust Company, Boston, Mass.

THE development of a trust department into a profit producing division of bank service can be accomplished only through experience acquired during many years and at considerable expense. "Trust service is always of a confidential nature and building confidence is not frequently accomplished overnight."

Because trust service is so intimate and confidential, trust companies have been reluctant to urge upon the public the advantages of a corporate fiduciary, either through publicity or direct solicitation. The lawyer, by the ethics of his profession, is forbidden to advertise his services or to solicit his own appointment as executor or trustee and it is largely because of this that he mildly resents the activity of banks along this line.

Inertia is a characteristic of human nature. We are more often impelled to action by outside influence, personal or incidental, than by spontaneous stimulus within. The very fact that the interests of clients are so often better served by the experienced corporate fiduciary than by the individual executor or trustee, has brought about publicity as a natural result. Trust advertising, and more recently active trust solicitation, therefore, have generally come to be accepted as proper and effective in educating the public to the importance and value of fiduciary service.

Essentials to Success

"THE essence of success, however, in the solicitation of trust business is not speed, but steadiness." In making up a budget for developing a large volume of trust business, so much of which will not come into operation until the more or less distant future, the bank must be prepared to allocate this expense as publicity and map out a program for years ahead.

We cannot gage the value of a solicitor entirely by the gross amount of trust business he secures. There is a vast by-product of advertising and good will constantly created for the bank by intelligent and well informed solicitors.

Trust service has so many striking talking points that it lends itself to the art of salesmanship better than any other department of the bank service, except possibly the bond department.

To interview prospects successfully and interest them in appointing a corporate fiduciary as executor or trustee requires a knowledge of elementary probate practice, the customary provisions of wills and trusts, duties of executor and trustee, taxes, and trust investments. Such a solicitor must be tactful and sincerely interested in helping prospects solve their personal problems to their best advantage.

It is, therefore, essential that trust companies be prepared to compensate well and obtain the type of man for solicitor that the importance of trust service demands. Having employed him, we must then be prepared to stand behind him for a long period.

The New Movement

IN this brief statement of what appears elementary, I have merely made a background to discuss the new movement of which so much has been said and written during the past two years, namely, cooperation of insurance underwriters and trust companies in the creation of life insurance trusts.

This cooperation has been heralded by many as the greatest contribution, so far, of insurance and banking to the 20th century. Because such a movement appeals to the imagination, insurance men and trust companies all over the country have adopted it with enthusiasm and in many cases with too little consideration as to the character of the movement and the advisability of a carefully planned program.

It is true that the life insurance trust in one or another of its forms is a valuable addition to trust service. In particular, insurance trusts established for the protection of a partnership, or stock interest in a close corporation, offer a field of service that is full of great possibilities. Because of the value of this service, it is vital to a permanent and effective cooperation with the life underwriter, that the trust company should, as it were, get off on the right foot, without stubbing its toe.

It is easy for a trust company to open its arms and offer the glad hand to the Tom, Dick and Harry of the insurance salesmen. It is not so easy to curb or direct a salesman whose enthusiasm runs beyond the line, either of good taste or of conservatism. Because of our fear that trust service, in general, and Old Colony Trust Company, in particular, might suffer from "too much life insurance salesman," at first we were reluctant to undertake an active program of cooperation.

Discussions with prominent underwriters developed the fact that, generally speaking, 90% of the insurance

purchased by those men who would be likely to tie it in with trust service, is written by about 10% of the underwriters. These underwriters are careful students of the theory of insurance and its proper adaptation to the needs of the individual, estate or corporation. They are eager to develop a high degree of service that will reflect credit on themselves and gain the confidence of their clients. This type of insurance salesman may be better called the "insurance counselor" or "estate counselor."

The very nature of life insurance and trust service, the one creating, the other conserving the estate, makes them complementary and we felt that if we could devise a plan of cooperation to insure its adoption by the underwriter of the "counselor" type, we might well enter on a progressive and positive campaign for life insurance trusts. In the mind of the average New Englander, the word "trust" has in it so much of conservative dignity, integrity, and almost sanctity—it is essential that no promiscuous statements regarding this type of service should be made by inexperienced men to the detriment, not only of any particular bank, but of trust company practice as well.

A plan of cooperation such as we had in mind, while it naturally would be thoroughly understood, appreciated and endorsed by the high grade insurance counselor, would probably be looked upon with some suspicion by many insurance salesmen. The question very likely would be asked, "What is there in it for me, to cooperate with them? Where is the joker?" However, although this attitude at the outset might be obstructive, we believed that we might broaden the vision of this type of salesman and supplement the training of the insurance companies in their efforts to qualify more of their men as "insurance counselors."

A Plan of Cooperation

ACCORDINGLY, in cooperation with officers of the Boston Life Underwriters Association, we invited a number of the leading insurance underwriters in Boston to a dinner to discuss the proposition with us. At this dinner, Mr. Leslie G. McDouall, Assistant Trust Officer of the Fidelity Union Trust Company of Newark, N. J., presented the subject, with the use of his effective slides, in an admirable talk, a complete report of which appears in the Insurance Trust Bulletin No. 2, published in March, 1925. Mr. Denio, Vice-President of Old Colony Trust Company, outlined the nature of our trust service and of the organization of our trust department. Mr. Edward I. Brown, President of the Boston Association of Life Underwriters, and General Agent of the Phoenix Mutual Life Insurance Company, who has been much interested in this subject, responded cordially for the underwriters. We believe that those who were present appreciated the high plane on which we proposed to carry on this cooperation and we were gratified at their cordial response.

In an effective display advertisement in the daily papers the day of the dinner, we unqualifiedly stated our belief in life insurance. We prepared a readable booklet, "Life Insurance in Relation to Your Estate," a substantial number of which we have supplied to the general agents, with the suggestion that they be distributed only under their direction, by insurance salesmen, who in their judgment, were qualified to recommend and discuss trust service intelligently and with fine discretion.

This booklet, briefly and with appropriate illustrations, outlines the principal applications of life insurance tied in with trust service, i. e.:

1. To increase an estate through establishing a funded life insurance trust.
2. To prevent shrinkage of an estate through debts, taxes and administration expenses.
3. To conserve an estate created by a life insurance policy.
4. To solve the problem of the owner of a minority interest in a close corporation or in a partnership.

Supplementing an initial call by our representative or an insurance counselor, an advertisement or a letter that may invite a request for the booklet, the booklet paves the way for an interview with a trust officer.

Our plan provides for a series of advertisements, each one stressing the adaptation of a life insurance trust to a particular need of the individual. Copies of the advertisement are printed on semi-glazed heavy paper and are mailed to the general agents, the presidents of life insurance companies, and to a selected group of correspondents and prospects. Each advertisement will be supplemented by a folder prepared for general distribution, either by our Publicity Department or by insurance men. These folders also invite a request for the booklet, if they arouse the interest of the prospect.

They are prepared with especial care, both as to the content, arrangement, and physical appearance of the subject matter. Concentration of attention on one aspect of a subject in concise but vivid description, the use of striking but dignified drawings, free use of white space, pastel color shades in type, an avoidance of the commonplace—by these methods we try to give a warmth and individuality to our mail literature.

We have given a number of talks before groups of insurance men at the agency offices, have carefully outlined our position and have given them an opportunity to ask questions, with the idea of removing any suspicion from their minds that we are exploiting them. At these talks, we have urged them to trustee their own insurance. By so doing, they work out a complete case and provide themselves with their most potent sales argument.

Client Profits Most

IT is interesting that in this plan of cooperation, the client profits most, by expert advice and the benefits of the service rendered.

The insurance underwriter profits next—first, by hav-

ing established himself more solidly in the confidence of his client through intelligent zeal on his behalf—second, by the receipt of commissions on premiums, if examination of the affairs of his client shows that he needs to take more insurance.

The trust company benefits the least—first, because we receive no compensation for the advice and the work in setting up trust agreements—second, because the trust will not become operative until the death of the trustor, unless a funded trust is created, and—third, because after the trust becomes operative we only receive a moderate fee for the service we render.

However, we are not in business as an eleemosynary institution, or on an altruistic basis. We believe that if we are selected as the trustee, it is likely that we will be consulted in regard to wills, appointment as executor, and also, we may be appointed as trustee under another living trust. It is also probable that other collateral benefits, which we cannot directly trace, may accrue to us, purely from an advertising angle. We may get savings accounts, checking accounts, rent safe deposit boxes, or be consulted about investments.

In the immediate plan, however, of working with life insurance men to popularize insurance trusts, we believe that we are doing them a distinctly positive service. Some of the men ask us to circularize lists of names with the series of booklets and letters which we prepare. We also follow up leads for the life underwriter, sometimes with, sometimes without letters of introduction. Others bring their clients to the bank and, with one of our officers, go over their problems in detail.

Avoiding Favoritism

THERE is one point, however, that we particularly stress, which we believe is the rock on which any campaign of cooperation might be likely to founder. We will not agree to furnish prospects for life insurance, in return for clients brought to us for trust service. We believe that we cannot afford to put ourselves on record as favoring any particular life insurance company. We do not assume to be experts on insurance. Neither do we ask the life insurance man to favor us, except as he may believe that we are particularly competent to give this type of service to a client who may not have a preference for another corporate fiduciary.

We have no doubt that in this work of cooperation we will get our share of insurance trusts, because we feel that the underwriter will turn to a bank, which is advanced in its knowledge of the technical problems which arise, to help him land his client. We are glad if our efforts will popularize insurance trusts for the benefit of other corporate fiduciaries. We are sure that their publicity helps us.

As indicated above, we believe that the insurance counselor who approaches the sale of life insurance from the angle of "estate service," will in the end sell more insurance of a better type. The men with whom we seek to cooperate are long past the stage of looking for prospects.

In our own organization we are training a group of trust solicitors to devote their entire time to production of trust business. The life insurance trust is an effective avenue of approach and handled by a tactful and clever salesman, opens a discussion of the intimate, personal affairs of the prospect. An appointment with a trust officer develops the subject further and leads, with very little pressure to consummation of the most important single act of a man's life, namely, the drawing of his will and appointment of a corporate executor and trustee.

Estate Problems Lectures

IN order that underwriters and our own trust and sales force may be better informed as to estate problems, trusts, taxes and investments, we have arranged for a series of about twelve lectures, to be given at the bank weekly, starting February 15th. The ground will be covered briefly as follows:

Laws of Descent and Inheritance, Wills and Estates, Executors—Duties and Problems, Trustees—Duties and Obligations, by Ripley L. Dana, Esq., of the Massachusetts Bar.

Trusts—Kinds, Purposes, Methods of Operation, Brief Discussion of Trust Deeds, Ripley L. Dana, Oliver Wolcott, Vice-President Old Colony Trust Company.

Trust Investments, S. Parkman Shaw, Vice-President Old Colony Trust Company.

Inheritance Taxes and Income Taxes—Particular Application to Life Insurance Policies and Life Insurance Trusts, F. W. Denio, Vice-President Old Colony Trust Company.

Selling Problems of Life Insurance and Trust Service, W. H. Brown, Assistant Vice-President Old Colony Trust Company.

To these lectures we have asked the general agents to send a few men selected from their agency, whom they consider especially qualified to take the course and go through with it. It seems to us that these lectures will be of substantial benefit in stimulating the desire of those who attend, to become more efficient through further thought and study of the problems that will be briefly outlined.

At the first lecture on Tuesday, there were about sixty insurance men present besides a large number of our own men and women in the department. Mr. Dana handled the intricate subject of the laws of descent and inheritance very clearly and consistently, and the comments from the insurance men were so favorable as to the benefits of the policy that I feel that the experiment is a long step in the right direction to popularize life insurance trusts in a very sane and sound manner.

We hope that the plans which we have outlined will accomplish the main result of enlisting only the highest type of cooperation and we welcome any suggestions from insurance men and other trust companies that will enable us to accomplish our purpose in a manner that will advance the prestige of the corporate fiduciary and the insurance counselor.

(Adjournment)

Sixth Session

Friday Afternoon, February 18, 1927

MR. MCLUCAS presiding.

CHAIRMAN MCLUCAS: The first subject this afternoon is, "Selling Trust Services Through Personal Salesmanship," to be presented by Mr. H. B. Grimm, Manager of Business Extension of the Security Trust Company, Detroit.

Selling Trust Services Through Personal Salesmanship

By **H. B. GRIMM**

Manager of Business Extension, Security Trust Company, Detroit, Mich.

MR. CHAIRMAN, Ladies and Gentlemen: With all due modesty, I think I can say that Detroit is in the first ranks of cities whose trust companies are thoroughly alive to the tremendous possibilities of intelligent personal solicitation of wills and trusts, and particularly insurance trusts. Therefore, what I have to say is based not upon theory but upon several years' practical experience and observation. Having in mind the fact that trust companies in Michigan differ from most others in that they do no banking business but are entirely separate fiduciary organizations, having the support of their local banks instead of competition from them. I can almost hear someone say that this fact is one of the reasons why it is easy for Detroit to be among the leaders in this somewhat new and tremendously fruitful field. But we in Detroit envy you new business and publicity executives, who are associated with institutions that have thousands of wealthy people as depositors, as you have a virgin field of worth while prospects already friendly to you through daily contact. We have nothing like that. We have to go out and dig for the great majority of our prospects.

During the course of the year, quite a few trust men from other cities visit me to find out what my company is doing, how we do it and what results we get. In turn, they tell of the activities of their institutions. I am amazed at the attitude of some of these visitors. Many of their institutions do not yet fully comprehend the extent of this most profitable field of endeavor. They seem to be bashful about really trying to sell their service through personal solicitation, or have merely made a half hearted try at it. It seems inconceivable, in these days of intense competition and new methods in bank and trust company promotion, that any live institution can fail to realize that the trust department which is piling millions of dollars of business upon their books is the institution that goes out after business instead of waiting and hoping that, through old fashioned methods, it will come to them.

Not long ago, a representative of one of America's foremost trust companies called to exchange ideas with me. I thought this was my chance to learn how a "real" institution sells its service. But, this man, presumably in charge of new trust business, did not know whether his company had sold fifty or one hundred and fifty wills and trusts during the past year, what it had cost to sell them, their source, or what constituted his best field.

Need for Exact Knowledge

I CANNOT help but contrast this situation with that of some other trust companies who keep as accurate records of their sales as they do of their investments, deposits, earnings, etc. They know when and by whom the prospect was sold, his worth; who his attorney is, if any; whether his will embodies trust features and whether his life insurance was trusteed. They know what their trust salesmen do daily; how many calls it requires to make a sale; what it costs for each document secured and what the probable fees will be. They know what professions are most easily sold; what their representatives should say and not say. They know, from past records and experience, what field is most prolific; how many wills and trusts they have under $50,000, how many under $100,000; a quarter, a half, one, two, three, five, ten million dollars each.

They know how many they have sold and how many they can expect to sell. They are beginning to anticipate their future working force requirements on the basis of the law of averages and are planning to build a service that will equal their spoken and published promises. Your institutions know when bonds and mortgages mature, why not know when wills are likely to mature and be ready to handle them properly? You may ask, "How

can the maturity of wills be anticipated?" Why not use the life insurance "expectancy" tables? If these are accurate enough for the insurance companies to base premium rates upon, they surely will be accurate enough to tell you approximately how many wills will be apt to mature each year in the future. In any event, they will help point the way to a scientific basis for building your future trust department organization. The time is coming, when our institutions must administer wills and trusts by hundreds and thousands, instead of by scores.

Analysis of Expenses

I WONDER how many of you know how much it costs to secure each will or trust? What items should be included? Should salesmen's salaries, auto and traveling expenses, etc., be included in this expense, or rather investment for the future? What part of the salaries of the members of the publicity department and what part of your own salary should be included? How much of your advertising cost should be charged to selling? How much salary of the vice-president, trust officer or junior officer handling the "over the counter" customer should be charged as part of the sale?

If you don't analyze, itemize and record your future business in this way, how can you be sure you are not putting a lot of unprofitable business upon your books? Remember how long it took us to wake up to the unprofitable checking idea. Let us get started right in this new departure.

What is the average size or worth of the future executorships and trusteeships filed away in your vaults? What is the average term of years your trusts will run? What will be the probable fees—the probable profits?

Compensation

TO help in deciding upon compensation for your salesmen, in proper proportion, what is the rank of your salesmen as regards number of documents sold per week; their average worth? Who sells the big fellows, who the smaller ones? How do your women representatives compare with the men? Who has the best results with elderly prospects, with the young chaps?

Following the principles and practices just mentioned has brought to several trust companies, of which I have knowledge, these almost unbelievable results: In the first case, a department two years old in a small company in a city of good size, with heavy competition, secured two hundred and twenty-five wills and trusts totaling fifteen millions of dollars; in the second instance, an old, well established bank and trust company in a large city, that has paid little attention to promoting its trust features, was surprised to find how easy it was to secure three hundred wills and trusts the first year, totaling thirty millions of dollars. The figures I have in mind in a third case, show well over a thousand wills and trusts in a given two year period, including the trusteeing of twenty millions of insurance money—the aggregate total of business being approximately two hundred millions of dollars, at a cost, as I understand it, of about $140,000 and with the help of consistently planned advertising and a limited number of people in the selling and publicity divisions, plus, of course, the collateral value of previous advertising, the reputation of the institutions in question, and the efforts of the men who receive the "over the counter" business. What the total figures are for Detroit, I can only guess, but, if accurate figures were available, I would not be surprised if, in 1926, 4,000 wills and trusts were secured aggregating, at least $400,000,000. That, ladies and gentlemen, is in a community where the trust company idea is quite new; I think our oldest trust company is thirty-three years old.

Modern Methods

DO I hear someone say that is going too far, commercializing the proposition too much? If so, isn't it merely the old bug-a-boo of dignity and lack of precedent that really troubles us? Why continue to offer trust business in the way that grandfather and great-grandfather did? Why not be modern?

I have heard some companies whom I think have too much commercialism in their selling methods. They use high pressure methods on their salesmen, prospects and insurance underwriters alike. What they want is the signature on the dotted line. If the document does not cover the man's estate plans in the best possible way, they seem to care little. If any great number of trust companies do this, it will reflect upon those who strive hard to render intelligent service. Let us keep quality in mind, as well as quantity, both in selling and serving.

Advertise and sell facts. Take the mystery out of trust company fees and procedure. Train your salesmen and trust officers how to work out the best of estate plans. Work for a higher standard. Train them thoroughly. If someone asks what "legal" investment are, let them be prepared to answer fully and concisely. Have them posted on your company's principles and practices, your strength, record and personnel.

Let them be definite in their statements. Let the prospect feel—"here is a man who knows his business." They should fit their solicitation to the prospect's station in life, and his mood and his type of business. They should sell by inference, not obviously. They should confer, not force; should create confidence in the service offered and in their institution. Let them always have a good word for competitors, for the legal profession; for life underwriters. Let them be patient, sociable within proper bounds. They should remember they may have many dealings with the man whose will they secure. Let the prospect feel free to call the salesman in again to consider changes, to discuss living trusts, investments.

A Word to Life Underwriters

HERE is another thought I want to leave with you, and I am sure that the life underwriters present will understand the spirit in which I say this. The trust companies worked for years to show insurance men it would stimulate business if they talked wills, estate plans and the trusteeing of insurance, so that now some of the enthusiastic underwriters have gone so far as to set themselves up as specialists in the planning and preparation of wills. As a rule, this is true only of new men in the insurance field, although a few old timers have let the lure of big business temporarily blind them to the fact that the trust company men—especially in larger cities—know considerable about planning estates and trusts, about laws, taxes and other important things and are far better qualified to do this than the underwriter. I could recount instances of rather thoughtless actions of underwriters, but we have not time. Suffice it to say that insurance men should not actually prepare wills, that is a job for a good attorney. Neither should they upset the good work of intelligently sold trust service by suggesting to these future clients of the trust company that they be allowed to analyze the wills to suggest changes, inferring, in a way, that neither the trust company, who helped plan that will, nor the attorney who drew it, knew as much about such things as he does.

Perhaps, you think these things radical, but someone has to present what may seem to be advanced ideas, otherwise we could not sharpen our minds through discussion. And that is what we are here for—discussion and the exchange of ideas. I hope I have given you the germ of at least one idea.

I am proud to be a member of the profession we follow. It is an inspiring occupation, wrapped in human emotions and human nature. We should strive always to fulfill the trust placed in our institutions by the public and be true keepers of the faith, worthy guardians of our flock. I have pointed out two paths which are open to you: the higher or progressive level, and the lower or old fashioned level. It is for you to choose between them.

Oregon Bill Against Advertising

CHAIRMAN McLUCAS: We are going to have a little break in this program by having Mr. Mershon give you a very interesting telegram just received.

SECRETARY MERSHON: Some days ago, we were advised that there was a bill introduced in the Legislature of the State of Oregon to forbid corporate fiduciaries in that state advertising or personally soliciting trust business. That is not a new idea because we encounter it every other year, when the major portion of the state legislatures are meeting, but it was a little surprise to see it appear in Oregon at this time. Our Committee on Co-operation with the Bar has been quite active in connection with this matter. I have just received this wire from Oregon:

> "Text Senate Bill 202, as passed by Senate and House of Representatives and now waiting signature of governor, as follows: "Any trust company or other corporation whose officers or agents shall solicit legal business shall be ineligible for a period of one year thereafter to be appointed executor, administrator or guardian in any of the courts of this state. Any trust company which advertises that it will furnish legal advice, construct or prepare wills or do other legal work for its customers shall be guilty of a misdemeanor and, upon conviction thereof shall be punished by a fine of not less than $100 nor more than $1,000 or imprisonment in the county jail for more than one year or by both such fine and imprisonment in the discretion of the court."

I do not know that there is anything to say on this, except that it is a bill somewhat similar to the one introduced in the legislature of Washington—I think in 1917—which bill operated for three or four years before it was partially repealed. Judging from the text of the bill, as we have it here, it might be exceedingly difficult, under a law of that sort to know when you were or were not breaking the law. It seems to me to be a rather drastic measure, and one that would cause the trust men of that state to be quite apprehensive in assisting customers in the preparation of the data for their wills. In comparison with the original bill, which was presented there some days ago, they consider this measure quite satisfactory. It is hoped that it will not spread to other states, because trust business is difficult to transact, at the best, and if you have continually to be apprehensive lest you encroach on the prerogatives of the legal or other professions, it is going to retard the growth of your business.

We have been consistently endeavoring, and have been almost one hundred percent successful, in co-operating with the Bar of the country. I think, where they introduce measures of that sort, it is because they do not understand the trust company viewpoint, unless perhaps, there may be some flagrant violation about which we know nothing in the state.

MR. W. H. GILL (Trust Officer, Nashville Trust Co., Nashville, Tenn.): Just before I left Nashville, a similar bill was introduced in the Legislature of that state.

CHAIRMAN McLUCAS: The next subject takes us back to insurance matters and is, "Experiences in Selling Insurance Trusts," to be presented by Mr. Oliver J. Neibel, Special Representative, Commerce Trust Company, Kansas City, Missouri.

Experiences in Selling Insurance Trusts

By OLIVER J. NEIBEL

Special Representative, Commerce Trust Company, Kansas City, Missouri

YEARS before trust companies saw the possibilities of adapting their services to the proceeds of insurance policies, the great insurance companies of the United States were selling a great volume of insurance and were urging their policy holders to protect their families by making their policies payable on the income basis rather than in a lump sum.

Gradually the leading trust companies of the United States came to realize that about 80% of the value of the average man's estate consisted of life insurance and that since their trust services were being applied only to the real and personal estate of their customers, they were losing 80% of their potential trust business.

As soon as these facts were understood by the trust companies they devised the insurance trust which made it possible for their customers to create a trust estate with the proceeds of their insurance policies. Slowly at first, but with ever increasing momentum, the insurance trust plan gained in popularity. During the past few years much has been said and printed about the insurance trust. A considerable portion of every trust conference has been devoted to the discussion of its possibilities and its technique. Many insurance conventions have been devoted partially or wholly to the discussion of the insurance trust.

Early in this movement, the bank with which I have the good fortune to be associated, conducted an insurance trust advertising campaign. Since, at that time the insurance trust was an unheard of thing in Kansas City, this campaign was purposely made purely an educational one. The results, however, were gratifying. Many inquiries both from our customers and from insurance underwriters were received. It was soon realized that in order to derive the greatest benefit from our advertising, it was necessary to have someone who would make it his business to follow up the leads coming into the department and to work with the insurance underwriters who were daily bringing the names of prospects to the bank. To meet this need, a New Business Division of our trust department was created and thus we began soliciting insurance trust business.

Ethics of Soliciting Trust Business

THERE has been some discussion regarding ethics of soliciting trust business. In our bank we firmly believe that a trust company or bank which seriously desires to build its trust department should have at least one man who devotes his entire time to trust development work, following leads received as a result of advertising and encouraging the co-operation of attorneys and insurance underwriters.

I do not know of any bank or trust company which has adopted personal solicitation of trust accounts and then later abandoned it. Most banks begin with one solicitor and add more as time goes on. One trust company in the United States has thirteen solicitors devoting their entire time to soliciting trust business, with remarkable results.

Most of those who object to trust solicitation do so on the ground that people of means may resent being approached by a representative of the trust company regarding such a personal matter as a will or a trust agreement. Our experience does not bear this out. Men spend their lives building their estates and I have found that they are much concerned about the disposition of their property and seem glad to discuss estate matters with a representative of a trust company in which they have confidence.

Last summer while visiting twelve of the principal cities of the eastern part of the United States I called on the leading trust companies in each of them to discuss trust development work. In one of the largest cities I was told by the officers of three of the principal trust companies that it would not do for them to solicit trust business; they conceded it might be all right out West to solicit this business but emphatically declared that it would not be successful in their city and that it would react against them. That afternoon I called on another trust company in that same city and learned to my surprise, that three solicitors were employed by them and that these three solicitors had placed $13,000,000 worth of trust business in the files of that company in the first six months of 1926.

Even though it were true that it is a very difficult and delicate matter to approach men of means regarding their wills and trust agreements, *is not that in itself, an argument in favor of personal solicitation?* Is it not true that when you have a very delicate or difficult mission to accomplish, you hesitate to attempt it by letter or by the printed word? Wouldn't you either go yourself on the mission or send someone in whom you had confidence to interview the party concerned? The most intimate diplomatic relations between governments are carried on by personal plenipotentiaries.

True, some men have proposed by mail but the most successful courtships have been carried on in person.

But whatever one may think about the general solicitation of trust business, the usual objections to general solicitation cannot logically be advanced against soliciting insurance trusts. One seldom hears of a person going to an insurance company's office to purchase life insurance. People are accustomed to having their insurance underwriters call to discuss insurance settlement

plans with them. They naturally expect insurance service to be brought to them. If the trust companies desire to secure a volume of insurance trust business they must follow the custom of insurance companies and carry the service to the prospects. We can profitably take a lesson in salesmanship from insurance underwriters.

Attitude Toward Insurance Men

NO discussion on selling insurance trusts would be complete without discussing at least, briefly, the co-operative movement between insurance underwriters and trust companies. One of the principal duties of every trust development man is to cultivate the friendship of the underwriters of his community. This would be true even though the trust companies were not particularly seeking to be named as trustees of the personal insurance policies of its customers, for the by-products of the insurance trust are well worthy of any effort or expense which a bank or trust company may make among the insurance underwriters.

The officers of the trust company, however, should be very careful not to antagonize the insurance underwriter. We will never get the good will and co-operation of underwriters by taking the attitude that the chief purpose of insurance companies is to create estates for trust companies to manage. Remember, that insurance companies had developed their settlement plans long before insurance trusts were known. If we carefully study the insurance settlement plans offered by the insurance companies we are forced to conclude that the insurance settlement plan has its place in the scheme of conservation and that in many cases it will serve the insured better than the insurance trust can possibly serve him. Trust companies can not, for example, apply the annuity principle to insurance trusts.

Let us then give the Insurance Settlement Plan the credit it is due, if, for no other reason than to secure the good will and co-operation of the insurance underwriter. We should study the insurance settlement plans so we may be able to get the point of view of the underwriters. I repeatedly tell the insurance underwriters of Kansas City that I am willing to let *them* decide whether in *their* judgment *their* clients can best be served by the insurance trust or by the insurance settlement plan offered by their company.

Trust companies will not suffer by this attitude. No one ever suffered by being big and getting the point of view of the men with whom they wanted to co-operate, but by all means we should see to it that the insurance underwriter becomes thoroughly familiar with the services trust companies have to offer which his insurance company cannot offer and would not attempt to offer if it could. For example, insurance companies will not agree to accept discretionary powers. They will not serve as trustee under a partnership or close stock agreement or as trustee under a funded insurance trust and by far the most important service they cannot render to the policy holders is that of executor and trustee under a will.

Even though the insurance underwriter only recommends the insurance trust when his prospect cannot be served by the insurance settlement plan, if you have properly posted the underwriter on the possibilities of the insurance trust, your bank will be more than repaid for its efforts among the insurance underwriters. In other words, putting it in slang terms—"The trust companies can grow fat on what the insurance companies leave."

Point out to the insurance underwriter the possibilities of the *"will approach"* in selling life insurance; teach him that the best way to co-operate with the trust company is to work with the trust representative in urging his policy holders to plan the conservation of their entire estates, not merely their insurance estate. I am thoroughly convinced that the insurance underwriter can sell more insurance by using this "will approach" than by any other one plan. By the "will approach" I mean that the insurance underwriter should approach his prospect not to purchase insurance, but to urge him to get his personal affairs in order, to let the insurance underwriter plan his insurance estate and to let his trust company advise with him in arranging the balance of his estate in proper order for profit and conservation.

This plan of selling insurance offers a real opportunity for trust solicitors and the insurance underwriters to co-operate. Many Kansas City underwriters are using this method of selling insurance with marked success and, incidentally, the leads brought to me by these men have resulted in considerable business for the trust company.

But trust companies cannot depend upon insurance underwriters to bring in all their trust business. We cannot let George do it all. No substantial business will grow if it depends upon others to bring in its business. The insurance underwriter, no matter how friendly he is to you, is selling insurance and not insurance trusts. He is making his living that way. I wonder how much insurance the underwriter would sell if he adopted the policy of a large number of trust companies and sat in his office waiting for trust companies to bring business to him.

Getting the Business

IF we are really in earnest about selling insurance trusts we must go out and get the business ourselves. After all is said and done I have found that very little, if any, business comes to me without effort. Most of the leads I receive, no matter whether they come from insurance underwriters or from sources within the bank, must be followed up and sold and this is true even of men who, of their own volition, come to the trust department to talk about their estates.

That is the problem which every trust company and bank is facing today. I have learned there is no key to success in soliciting trust business any more than there is a key to success in any other kind of business endeavor. Every case will be different and the trust solicitor will

have to learn to choose whatever plans of approach he thinks will be most likely to attract the interest of each of his prospects.

I am, however, a firm believer in the direct and candid approach. I quite often candidly tell my prospect at the very beginning of our interview that I have called to explain to him the service which my bank is able to render him in connection with his insurance policies. Then I call his attention to the fact that whether he realizes it or not, he is carrying his insurance to replace his earning power in case of his death. He will generally say—"Well, I never thought of it in that light before but I guess you are right," then I ask him this question—"If your insurance is to replace your earning power or income, isn't it logical to arrange it in such a manner that it will produce a steady and definite income to your family rather than to have it paid in one lump sum?" There is only one answer he can make to this question.

After explaining the insurance trust service to him I never fail to point out the importance not only of safeguarding his insurance funds but also the assets of his estate proper. After he has agreed that it is important to safeguard his insurance it is an easy step to show him that it is equally important to safeguard his estate proper.

In this manner the advisability of appointing the trust company executor and trustee of his will is brought to the attention of each insurance trust prospect in the most favorable manner and 70% of our insurance trust customers also have their wills in our files. Incidentally, I might suggest to those of you who hesitate directly to solicit appointments under a will that you will find the insurance trust offers a splendid approach to the question of your prospect's will.

Selling Complete Service

IT is just as easy and sometimes I think it is easier to sell a prospect on the conservation of his entire estate —both his life insurance and general estate—than it is to sell only an insurance trust or only a will appointment.

In order to sell our complete service I approach a prospect with this idea—"You have spent your life building your estate, why not spend a part of one day planning its conservation." I sell him on the logic of making some definite plans for the disposition of his estate. Of course, I tell him he doesn't expect to die but neither does he expect his house to burn, yet he insures it. This reasoning seems to win the confidence of a prospect. Frequently, he startles me by saying, "Well, I have been giving considerable thought to what would happen to my property after I am gone and I am glad you called to discuss this matter with me," and, almost invariably, the next question is—"What have you to suggest?" "What is your plan?" Then I tell him I cannot suggest anything until I know something about his estate, himself and his family; it is surprising how often he opens his heart and tells all about his estate, his wife and family and his secret ambitions for them. After I have secured this information from the prospect I withdraw as tactfully as possible telling him I shall return in a few days with some concrete suggestions which I believe will be of interest to him. A few days later I call again with a carefully prepared survey of his estate together with an outline of an insurance trust and will, which, in light of the information secured at our previous discussion, I believe will accomplish the purposes he has in mind. I make sure to hook up the will and trust agreement in such a manner that they appear inseparable and attempt to sell him on an estate plan not simply on an insurance trust or a will. If, during the interview I feel that I will be unable to sell him both the insurance and will service I show him that the plan can be divided and endeavor to sell him the part of the service I feel he is most interested in.

Indirect Approach

SOMETIMES it is not advisable to directly approach a desirable prospect. Discretion is the better part of valor in soliciting trust business. If I am afraid that the prospect I intend to call on might not like to be approached directly regarding our trust service I use what I call the "indirect approach."

I first discuss the prospect with the officer or officers who are handling his business. Then if they think it proper I make an informal good-will call on him, ask him about his business and if he appears to be in a receptive frame of mind, I casually ask him if he has ever had called to his attention the services our Trust Department has to offer him. If he is interested this will lead into a free discussion of our trust services. If I sense he does not care to discuss these matters I drop the subject and leave him until some later time when he feels more favorable towards our service.

I have found that men who have refused to consider our trust service sometimes suddenly develop an interest in the subject and place their wills in our files. Sometimes I never know what caused the change in their attitude but sometimes it is brought about by a death in the family or among his close associates and sometimes it is brought about by his ill health.

Sometimes the trust solicitor will sense a reticence on the part of his prospect to discuss his personal estate with him. If he feels this is true he should suggest to the prospect that, if he prefer, the Vice-President who is handling his business, would gladly discuss the matter in confidence with him. If this is acceptable to the prospect the solicitor should see to it that an appointment is made and the conference held.

The trust solicitor should not feel discouraged if he is not able to sell his prospects in one, two or even more calls. It often takes some time to sell a prospect. I have closed some cases this year that I began working on three years ago.

The trust company executive should not expect too much from a trust solicitor. Production comes slowly

and it is only by grim energy, resolute courage and constant effort that the trust solicitor is able to bring trust business to the bank but it has been our experience and the experience of most banks and trust companies who have given trust solicitation a fair trial that it is the one sure way of building future trust business.

SECRETARY MERSHON: Mr. Chairman, we have present here today an insurance specialist from Boston, and I vote that we give him five minutes. I had the misconception, about a year ago, that insurance companies made a lot of money from lapsed policies, but he convinced me, in his office in Boston, that that was a wrong belief. I would like him to tell us about it. Mr. Franklin Ganse, from Boston.

Preventing Lapse of Policies

By FRANKLIN W. GANSE

The Columbian National Life Insurance Company, Boston, Mass.

MR. PRESIDENT and Gentlemen: While it is true there is a surrender charge, as many of you know, when policies lapse, there is more money to be made by keeping the policy in force than there is through any small surrender charge that is exacted for its cancellation, and in many cases the full reserve is paid if the policy lapses. The companies of course, want to mature and pay their policies.

On a certain life insurance trust case of mine, the trust company paid the premiums on three out of four policies about ten days after the due date, twenty days before the expiration of the grace, as was their custom. They omitted to pay the premium on the fourth policy. As you know, a notice is sent out by the company fifteen or twenty days before the due date. A notice that the grace period is about to expire is also sent out a few days in advance and on the last day of grace the local agency or agent calls up to make sure that the premium is being remitted. The five days' notice, in this case, went to the insured's office and also to the trust company, which overlooked it; finally the insured's office paid the premium, so it did not have to be reinstated. Those premiums are now paid on the due date, without allowing them to run into the grace period. Many trust companies take the days of grace to make the little extra interest for the client, but it seems a very foolish thing to take the last limit of time the company allows.

I have had some discussion about methods to prevent the danger of lapse. Trust companies must have plenty of experience to provide for the non-lapsation of fire insurance and life insurance, but it would be a pretty awkward thing if you have a funded trust with about $2,000,000 of life insurance dependent upon it, and you should let it run beyond the grace period as the insured might have become an impaired risk.

An Adequate Plan

I HAVE suggested one or two plans, which I think Mr. Mershon was somewhat impressed with when we last met in Boston. One plan is this: A subordinate officer is charged with the responsibility of keeping track of the due date; another is charged with checking him up ten days later to see if the premium is paid; and still another is charged with checking up on a complete list, all the funded life insurance cases in all the different life insurance companies. If he goes over the whole list, once a month, he will catch every case within the grace period. By some such method, it will be perfectly possible to avoid any danger of lapsation. I suppose you have in your offices adequate plans to prevent the lapsing of policies on which you, as trustees, are responsible for premium payments.

I had a case of a widow with $5,000 of life insurance on her husband's life. She had great trouble to get the undertaker's certificate and the claims settled and filed. And after coming in four or five times, she said, "Mr. Ganse, you know, it is so much trouble to get these death claim papers made and to get the money, that sometimes I almost wish John hadn't died."

I have the honor to be a member of the committee on cooperation with your great business, appointed by the National Association of Life Underwriters, of which Edward A. Woods is Chairman; he sails for the West Indies, tomorrow, and I received a wire from him, saying he could not be here. I bring you his greetings and I know that you respect him and his cooperative efforts as we do.

Degrees for Underwriters

I ALSO want to say that the leading life underwriters appreciate greatly the opportunity to cooperate with the trust companies. Here you have a program of six sessions with six distinct and important topics relative to life insurance. That is an even greater recognition of the importance of such cooperation than we have given though we have devoted whole days to the matter in some of our national conventions and the life insurance journals are giving a great deal of space to it. The better men of our business are striving very hard to improve their status, and it is largely because of this development in connection with your work, and in connection with conserving estates

and preventing estate shrinkage, that we are planning to establish a college with degree-granting power so that our best-qualified agents can be known and recognized as such. The detail plans are almost complete and we shall probably have in less than three months, "Chartered Life Underwriters." Any man carrying that degree will be qualified for the best sort of cooperative work for the protection of estates.

In 1897, the first life income monthly payment policy was written by a friend of mine in Boston, and he told how they tried to run him out of town for tying up policy proceeds. It was thought a crime to try to restrict, through the operation of a rider, the use of that money, or the way it should be paid to the widow. It is a far cry from the limited service of that day to the efforts which these two great institutions are making today to give to the insured, his beneficiaries and his estate, not merely what he pays for but every possible element of service which can legitimately and advantageously be given.

Two Kinds of Service

I BELIEVE our service is not always in the right direction and even you gentlemen, while you have talked on a very high and broad basis, may forget the necessity of reaching the client and customer in your efforts to perfect and advertise what you have for him. There are two kinds of selling service, as I see it. The ordinary life underwriter is compelled, through his own limitations, the limitations of his work, his pocketbook or agency demands, to give the least amount of service necessary to make the sale. That is not the way we should do in broader fiduciary work, such as putting estates in order. We should give the degree of service that the circumstances call for, making the incidental sales connected with it. It is in such a spirit of service that we life underwriters seek to cooperate with trust officers and attorneys, recognizing that the larger and more complicated the opportunity is, the greater the measure of service that is called for and where the service is not directly connected with the sale or an appointment as trustee or executor, there should many times be a minimum charge for the service. There was an illustration of that in the escrow department discussion today when it was frankly said that the escrow department is not particularly profitable but is a fine business, as it pays its way and leads to other business.

Estates cannot be put in the best order after death, any more than the detailed plans for a house can be drawn after the house is built. It must be done in advance or not at all. The success of life insurance in this country proves that the estate idea must be sold. Advertising and office advice can do much, but it is safe to predict that both trust companies and life insurance companies must continue for many years to reach the estate owner, in his own office, and persuade him by all the arts of fair selling, if the rapidly growing (both in size and numbers) American estates of tomorrow are to be in good order.

CHAIRMAN MCLUCAS: We have completed our program except for the final item, "Presentation of Practical Problems and Discussion of Current Topics."

Keeping Track of Wills

SECRETARY MERSHON: This question has been sent to the platform, "What methods are used to keep track of wills in the possession of a trust company, so that no matter how long a period elapses between the handing of a will to the company and the testator's death, there will be no possibility of the trust company's failing to remember about the will in its possession, when the testator dies? Is there any foolproof system by which it is impossible for a trust company to overlook the fact that it has the will of a man who has just died? Does some one employee watch the death notices and check them up against the list of wills? Or, in order to prevent error, do several employees watch the death notices and check them against several lists of wills? If so, in what shape are the several lists maintained?"

That is quite an important thing, and somebody here has undoubtedly solved it. I imagine that Judge Hervey knows, just as soon as somebody dies, whether the will is in his archives.

JUDGE HERVEY: We do not know, Mr. Mershon. It is a puzzling situation. We have many wills of people whom we have never seen since the will was deposited. We do not know where they reside, and it is no infrequent thing that a person dies somewhere in the East or the Northwest or the Philippines or South Africa or Paris, whose will is with us. We make a daily check of the death notices carried in three or four papers published in our country, but beyond that we have no means of knowing. On several occasions, we have produced a will more than a year after the testator's death, not having known, prior to that time, of his death.

I may add to that, that our recommendation always to the testator is that he put a copy of the will in his safe deposit box or among his private papers, so in the event of his death, some member of his family may find a copy which bears the statement that the original is in the custody of the bank.

SECRETARY MERSHON: What if the members of the family do not care about the will and destroy it, then you are in the same position.

JUDGE HERVEY: That seldom happens. I have never heard of a case of that kind.

MR. BOWMAN: We have found this plan works well and brings us prompt information. We invariably furnish the testator with a copy of his will and a receipt for it, advising him to keep both in his safe deposit box so that they can be found. That has led to a number of telephone calls coming to us, that, "So-and-so passed away." Otherwise, we should not have known prompt-

ly. In a great metropolitan center like Chicago, where we deal with quite a number of unattached men, whose families have either passed on or are distant, we suggest to them that they have in their notebook or pocketbook a trust officer's card, with word that if anything happen the company is to be notified. This was particularly valuable in one case of a widower with no relatives in Illinois. He went to a hospital for an operation, and, three weeks after, passed away. He had in his purse a card stating that I was to be called up, if anything happened to him. The political affiliations are such in Chicago that when anyone dies in a hospital without relatives at hand the hospital is obliged to notify the Public Administrator. In this case they did so. Mr. Public Administrator went through the man's affairs; discovered my card and was kind enough to telephone me.

An invitation from the New York Stock Exchange for members of the Conference to visit the Stock Exchange the following morning, was presented.

. . . . . .

CHAIRMAN MCLUCAS: If there is nothing further, the Conference will stand adjourned.

(Adjournment Sine Die)

Banquet

Thursday Evening, February 17, 1927

HON. EDWARD J. FOX, President, Trust Company Division, American Bankers Association, presiding as toastmaster.

Remaining Safe for Democracy

By EDWARD J. FOX

President, Trust Company Division, American Bankers Association and President Easton Trust Company, Easton, Pa.

MEMBERS of the Trust Company Division of the American Bankers Association, Visitors and Guests: It is my privilege as President of the Trust Company Division of the American Bankers Association to preside at this function, and, in accordance with the time honored custom, briefly to refer to the condition of trust companies throughout our country.

This has been a year of progress. The conference which has been in session for two days has again made manifest the fact that trust companies everywhere are sharing the prosperity that has existed throughout the country generally. At the banquet held in 1923, Mr. Theodore G. Smith, the former President of the Division, stated that the trust companies of the United States were the custodians of thirteen billions of dollars. The reports for 1926 indicate that the banking resources of the trust companies of America are over nineteen billions of dollars, and that the gain over 1925 was one billion one hundred and ninety millions, or an increase of over six billions of dollars from 1923. The deposits during 1926 totalled sixteen billions, a gain of nine hundred millions in the last year.

The figures I have just given represent only the trust companies proper, but it should be remembered that our organization now embraces not only trust companies, but all banks which exercise fiduciary powers and, while I am not able to give the figure in total of all the fiduciaries, it would doubtless swell to a much greater amount than the figures just given. It is difficult for the finite mind to comprehend figures of such magnitude.

Expansion of Trust Field

THE growth of the trust companies measured in another way represents the large number of activities in which they now engage. One hundred and twenty-five years ago, when the early trust companies were formed, life insurance in connection with their work was an important, if not the important, feature. Gradually, the care of trusts developed and the life insurance feature was abandoned. But, those trusts were largely, if not almost entirely, the care of the estates of the dead. In addition to this function, the trust companies became large savings institutions and engaged in the general banking business. Today, there are comparatively few trust companies which confine themselves exclusively to the administration of trusts. The idea that a man in choosing an executor should name his best friend or a business associate is rapidly being dissipated and the public is learning that to name a skilled and experienced corporate fiduciary is the best method of administering an estate. The care of the estate of a decedent is no longer the sole trust administered by fiduciaries. Corporate trusts are an important branch of our work.

We have revived interest in life insurance, adopting an entirely different method by writing life insurance trusts, with the co-operation of the life insurance companies; this has become one of the most important branches of trust work. A large trust company in a western city recently reported that for the year they had written life insurance trusts aggregating ten millions of dollars.

The community trust is another field of endeavor that is only just being developed, but bids fair to prove a valuable adjunct in our effort to serve the public need. The latest activity in the creation of trusts is the establishment of living trusts for the care of the estates of those who are still with us, and this, too, has filled a want and is rapidly becoming more important each year.

In the business world, in almost all its varied and multiform phases, there has been great prosperity and the outlook apparently is still a promising one. The railroads, the automobile industry, the iron and steel trades, the public utilities, are all in a flourishing condition and giving bright promise for the future.

Caution Regarding Real Estate Values

OCCASIONALLY, we hear a word of caution, lest we become too zealous and over confident when we are riding on the crest of the wave. A distinguished financier recently called the attention of the business world to the fact that America, at least in the urban portions of it, is being overbuilt. For the period following the war, by reason of a greatly increased cost of materials and labor resulting from the war, there was almost a cessation of building, but gradually the necessities of the situation required that building should be carried on and we have seen a period of great activity in this direction. The buildings which have thus been erected have been built at the highest cost and the securities resting upon these large buildings represent large sums of money invested.

The rents are now high and, for the present at least, justify the expenditure of the vast sums that have been made. Without being an alarmist, I suggest that it would be well for those of us who are constantly charged with the investment of funds to take note of the possibility that there may be, and probably will be, a depression in real estate values caused by the reduction of rentals, and that caution should, therefore, be observed in making investments of this character. The excessive cost of building does not necessarily represent intrinsic value. If building operations continue as at present, the law of supply and demand will inevitably cause a reduction in rentals, and thus the value of the security must be impaired.

Problem of Installment Buying

BUT, this is not the only problem of the business world. There is an ever-changing aspect of the difficulties which confront the banker and his clients who impose confidence in his judgment and seek his advice. The installment buying of automobiles, furniture, books, and countless other articles in trade and commerce, is a problem that has not yet reached a proper solution. Akin to this, is a somewhat radical change recently developed in merchandising known as "hand to mouth" buying. The manufacturer, if he curtails his production, increases his overhead, and if he does not curtail production, he is required to carry a large stock for which there is no immediate demand. The retailer buys as he needs in small quantities, and the wholesale merchant is without an outlet for his finished product. Some adjustment of this problem is imperatively needed if our prosperity is to continue. I believe that the wisdom and experience of our captains of industry, as well as our leaders in the banking world, will meet this test and guide us safely through the difficulties that confront us.

Economic and Political Problems

THE period between the birthday of Lincoln and the birthday of Washington stirs our patriotism and naturally turns our thought to governmental questions and political conditions. Here again we are confronted with many and difficult problems. It is interesting and encouraging as well to look back over past history and find that the problems which now confront us are largely variations of the same problems which have occurred from time to time in different periods of our history, and that they have been successfully solved. The relief of the farmers, our entrance into the world court, our relations with foreign nations, reduction of armament, the McFadden bill, are all questions which are vital and must be answered with wisdom.

A distinguished educator has recently startled the political world by bringing to the fore the third term question. He points to the example of Washington as settling finally and for all the impropriety of having the Presidential oath administered three times to the same person. In the same way, Washington's alleged caution against entangling alliances was quoted in the heated controversy as to our entering the League of Nations. I have never believed that, were Washington alive today, he would adhere to the views imputed to him or at least to their application to present day problems. So, in this instance, I can conceive how General Washington in his day, when our Country had just shaken off the shackles of royalty, might think that repeated elections to the Presidency might be interpreted as a dangerous tendency. During the early years of his incumbency in the office of President, he had been accused of aping royalty. But it by no means follows that in this day and generation, when we are so far removed from monarchy, there is any real danger of our abandoning democracy and setting up an empire. We may not have succeeded in making the world "Safe for Democracy" but I have no fear but that our beloved country is and will remain safe for democracy.

Prohibition and its kindred topic "law enforcement" are still causing dissension, but I believe as good citizens there is only one course open to us and that is to uphold the law and the constitution. There is an orderly and legal method of changing the law if it really be contrary to the will of the people, but until that change is legally made, obedience to the law is mandatory and disobedience is fraught with great peril.

I am inclined to believe that our departure from the scheme of government as it was framed by the remarkable men who composed the constitutional convention, giving us that "most wonderful instrument that ever sprang from the brain of man," as Mr. Gladstone characterized it, was a grave error and that those early statesmen were wiser than are we.

Election of United States Senators

THE attention of the country has recently been directed to the scandal that has arisen in two of the largest states of the union in connection with the election of the United States Senators. I believe that one source of the difficulty that has thus arisen is the fact that we have substituted for the method devised by our forefathers as to the election of senators, the popular election. It is said that at the time of the constitutional convention, General Washington and Mr. Jefferson were lunching together. Mr. Jefferson was opposed to a bicameral legislature and thought there should be only one House composed of representatives elected by the people. Gneral Washington in discussing it said to Mr. Jefferson: "Why, you have just furnished an illustration of the importance of having a second chamber which shall not be elected by popular vote." Mr. Jefferson, surprised, asked how he had done so, and General Washington said: "You have just poured out your coffee from the cup into the saucer for the cooling process, and we need the Senate which will be chosen by the legislatures and not by the popular vote for that very cooling process."

What is the result? We see senators setting their sails to catch each slightest wind of passing popular fancy. A few years ago, the Republican leader in the Senate voted against sustaining the veto of the President upon the soldiers' bonus because, forsooth, in a few weeks he was coming up for re-election and needed, or thought he did, the soldiers' vote. There is no difference or distinction between the House and the Senate. They both seek to reflect the popular mind and we have lost altogether the cooling process which Washington sought to give us, or in other words, independence of thought and action which so characterized the old time senators. And, it may be added that it is an expensive luxury, because we have as an illustration the fact that a senatorial primary in Pennsylvania cost three millions of dollars.

But, I must not trespass upon your patience by inflicting a discussion of constitutional questions at this time. I have only drawn attention to these illustrations in order to reassure you that, while we have difficult problems of government, we have also succeeded in meeting those problems in the past and I have a profound faith that in the future we will be equally successful.

I congratulate you all upon the splendid record which the trust companies have made in 1926. I look forward with confidence to 1927. It is a high privilege which we enjoy of serving the public; as trust officers, a most sacred duty is thus imposed upon us. Let us perform this duty with unfailing loyalty and fidelity, as we hope to merit the plaudit: "Well done, good and faithful servant."

THE TOASTMASTER: In order to show the talent we have in the banking profession, I desire to direct your attention to the fact that we are under great obligation to Mr. Ernest K. Satterlee, the President of the Franklin Savings Bank of New York, who has been at the organ this evening and volunteered to contribute to our pleasure. (Applause.)

THE TOASTMASTER: I now have the great pleasure of introducing to you a distinguished lawyer who has been called away from his profession by the necessities of an industrial corporation of which he is the head: Mr. Cornelius F. Kelley, President, Anaconda Copper Mining Company.

Enduring Landmarks

By CORNELIUS F. KELLEY

President, Anaconda Copper Mining Company, New York, N. Y.

IT is doubtful if there may be found in private life a body of men charged with a higher degree of responsibility to society and to their vocation than is the one represented by this assemblage. The statement made is exceedingly broad. A moment's reflection upon the character of your organization and the business in which you are engaged will justify its accuracy. It is concerning your duties and responsibilities, not only as fiduciaries of particular stewardships, but, in a more general way, toward the civic organization responsible for your creation and upon the administration of which your well-being depends, that I shall briefly address you.

Narrative of Man's Progress

THE narrative of man's progress from primitive beginnings to the plane of contemporaneous civilization is characterized by his effort to organize government, perpetuate its institutions, and to fix his individual status thereunder through the medium of established law. His earliest attempts in this direction are veiled by the mystery that obscures the unwritten past; but, so far as recorded history discloses, the chief group effort of this restless, ambitious and acquisitive creature, has been to found nations, extend the boundaries of the com-

mon domain, and enlarge the sphere of national influence. Antagonistic influences from both within and without have ever combined to checkmate this endeavor; so that the story of nations is one of progression, thence retrogression; evolution, then revolution peaceful or violent, following in never-ending sequence the attempt to reach an undefined objective which, because of the conflicting opinions of man himself, has never become fixed, and, probably, never can be in what will be accepted as a satisfactory form. The fact, however, that the Republic of philosophy or the Utopian community still exists only in the fabric of which dreams are made, should be no discouragement, for, measured by definite accomplishment, he who seeks can find abundant cause for satisfaction and self-congratulation in the contemplation of what has been achieved.

That there shall be no retrogression, but, because of your responsibilities insofar as you are individually concerned, and to an extraordinary degree that the collective effort of your organization shall be directed toward constructive accomplishment, results not alone from your heritage as American citizens, but, also, from the fiduciary character of your vocation and the duty you have assumed to discharge faithfully the trust that has been committed to your keeping.

Personal Property Rights Fundamental

WHATEVER philosophical discussion there may be as to those attributes of man that have caused him, in pursuance of natural instinct, to form government, the plain facts are that the desire to gain protection for his person and to obtain the right to acquire property and be secured in its possession are the fundamental concepts upon which all social compacts have been formed. These primary rights established, development in art and science becomes possible; religion commands respect; industry expands; commerce is fostered; cultural development follows, and the social organization that reflects the habits, pursuits and aspirations of a people is created.

The measure of what has been accomplished in this respect, as a whole, or by any civically organized group, cannot be estimated by any universal standard, for man has not yet reached, and perhaps he may never attain, a basis of common thought and understanding in regard thereto; but that we are, as a whole, notwithstanding its defects, living in an age of unparalleled progress and enlightenment, admits of no dispute. If such be the fact, it must follow that we are as a whole living in an age of the best ordained and most beneficently regulated governmental control that has yet been established. That we of America are particularly fortunate, notwithstanding the fact that there may be justifiable grounds for apprehension as to the future, is undoubtedly true.

America a Symbol of Accomplishment

AMERICA today symbolizes the finest accomplishment of man's efforts. It typifies the best expression that thus far has emerged from human hopes and desires. Its imperfections may be apparent, but in its magnificent whole it is the epitome of all that has followed from that slow and difficult journey that began in the dismal cave, through the opening of which unknowing eyes blinked at a mysterious and danger-infested world, to the splendid environment that surrounds us today. That our country occupies a position in the vanguard of the march of man should be not alone our boast, but its realization should be ever accompanied by a prayer of thanksgiving and an abiding sense of civic responsibility. To us a generous Nature bequeathed a new land of unparalleled resources, capable of producing everything required to feed and clothe and prosper an enormous population. Within its borders there exists an abundance of raw material having the potentials that are essential to every industry that can add to the comfort and convenience of life. These, developed under the spirit of our laws and the genius of our institutions, have brought this great nation into being, and through them it has grown and prospered until it occupies an unrivaled position among the families of mankind. The world has never witnessed, and, for lack of existing opportunity, may never again see, a comparable transmutation of basic elements into realized wealth.

Has Our Spiritual Development Kept Pace?

THE rapidity with which this embryo of yesterday among the more mature nations of the earth has reached its present stature of splendid proportions is symbolic of the maximum measure that has thus far attended man's possibility of accomplishment. The intensive application of all that has been acquired by knowledge or gained by experience has resulted in a material advancement the like of which no one had thought possible, for it has been a growth that to human experience was unknown. Of our material progress there can be no doubt; but may we be as assured that our spiritual development has kept pace—not spiritual in any restricted sense of narrow creed or dogma, but in the development of those finer ethical qualities that should govern man's conduct toward his neighbor and his attitude towards his state?

The generation which still holds the predominant position in contemporaneous American life has witnessed a greater change in the social and economic life of a people than ever occurred in any like period of human development. Within that brief space of time not only has the entire economic structure changed, but there has been also a correlative change in vocational pursuits and civic ideals. The one condition followed as a corollary of the other; the moment in which we live may be designated as a product of both.

An Age of Unprecedented Production

THIS age witnessed the vanishing of the frontier. Within its compass the trail that had been trod by the pioneer across the prairie and blazed through the mountain forest, was speedily followed by the track of the covered wagon, and then that of the Iron Horse. An influx of population that constitutes the greatest migratory movement of man followed, with a rapidity made possible only by modern means of communication and transportation.

Through millions of acres of fertile soil the first furrow was plowed, and in virgin forests was heard the first stroke of the ax and the busy hum of the saw. Mines of coal, iron and precious metals were exploited, and all united to add an unprecedented production to the stream of treasure that was to enrich a nation. Districts were settled and neighborhoods became existent. Villages were founded and grew to populous cities. Railroads, half graded and crudely equipped, changed miraculously into vast systems of transportation; rapid and dependable means of communication were established;—from ocean to ocean there rang forth what has become an epic of human effort and material creation. It was a land of golden promise that pulsed and vibrated in glorious rhythm, and that, in its realization, has exceeded the vision of the most imaginative. In the fascinating story of its reality there has been exceeded the fantastic imagery of the magician's touch.

Aggregating Wealth

IT may be assumed that the past twenty-five years spans the active business careers of the majority of those present—a quarter of a century; what a momentary glance at time it has been to those of us who have lived it!—an almost unrecordable dot in the long line that leads to infinity. And yet, what a cyclopedic volume it would require in which to record the endeavor and achievement that has been encompassed! Within that period the population of this country increased from about 76,000,000 to 115,000,000 people. The national wealth grew from $88,000,000,000 to $355,000,000,000; its per capita quotient from $1,100 to more than $3,000. The national income expanded from less than $18,000,000,000 a year to more than $68,000,000,000,—a per capita increase of from $236 to $593; while the average wages of all employed in industry increased from $489 to $1,485. The gainfully employed of the population—a safe index of production—estimated at 29,000,000 in 1900, was more than 43,000,000 in 1925. In the fourteen year period from 1912 to 1926, the savings deposits in all banks increased from $8,400,000,000 to $24,696,000,000. Large as is this amount, it represents but a fraction of the accumulated savings of the people; for there must be considered in addition the money expended in the building of homes, and in the purchase of the various appliances and instrumentalities that add so much to the convenience and enjoyment of the life of the people. Moreover, there should be likewise added the investment in building and loan associations; payments upon life insurance policies, and the acquired securities held in individual accounts:—the whole presenting an aggregation of wealth distributed among a population that makes of it the richest and most prosperous that the world has ever known.

To undertake to scan in simple speech the achievement of this epoch is impossible; its mental visualization alone taxes the credulity of even those who have actually seen it occur. And who is there who, pausing to reflect upon the impetus gained, can fail to speculate upon the possibilities to which its acquired momentum may carry?

Science and Invention

NOT alone, however, in the mere recital of aggregated wealth should the narrative of this period be expressed, for during its transition education has been placed upon a new plane; investigation has explored the realm of science, and applied skill has brought what were its mysteries to the service of man. Natural forces, that only a short time ago, in the bewilderment their manifestation caused, were attributed to the anger of supernatural beings, have lost their terror and have become useful and controlled agencies in ministering to comforts of daily life. The air has been conquered, and flight that occurred only in the intangible vagaries of dreams has become a matter of routine commercial intercourse. The depths of the sea have been explored, and beneath its surface men have penetrated and fought and died. The fear of those who listened in superstitious awe and wonder to "a voice heard in the air" has become a commonplace of casual interest as conversations are whispered back and forth across that vast expanse of ocean that for countless centuries baffled the hardihood and vanquished the courage of the most heroic. But why enumerate? A text merely is required; a compendium would serve but to confuse.

Transition to an Industrial Nation

IT was impossible that the economic foundation of civilization should be so profoundly changed without affecting the entire structure of the social life, the aspirations and the ideals of the people. The drift from the farm to the city, with the resulting change in occupation and environment that followed, is perhaps the most significant, and, in consequential results, the most important mass movement that occurred. From the composition of a population largely rural, we became an industrialized nation. From a total of 39,000,000, or 51% of the total, following agricultural pursuits, during the twenty-five year period we have reviewed, the total so employed decreased to 29,000,000, or to a proportion of 25% of the whole. Not alone did the political equilibrium become changed as a result, but there likewise occurred a profound alteration in the manner and method of living

among the people as a whole. Life became subject to factors that necessitated the creation of new agencies to meet the complexities that surround it; in industry, finance and distribution, great aggregations of capital, in corporate form, presented, if not the best, the most available solution. In agrarian occupations similar collective agencies were organized to assist the individual, and which now function in service to him from the purchasing of seed to the cooperative marketing of crops. In every pursuit, "organization, efficiency and intensive application" became the magic formula for the transmutation of individual effort into profitable results.

No fact is more amply demonstrated by history than that the ideals of a people are predicated upon that which is valuated as constituting the greatest success in the judgment of a majority of the community. In this respect the modern does not differ from his more or less remote ancestor. The pursuits that engross the attention of a people, and the political organization under which they thrive, are the reflex one upon the other. In every age and under every condition of civic organization, the majority of men who possessed the choice, have turned toward that pursuit or line of endeavor which offered the opportunity for the greatest success or gain, as measured by the estimate placed upon successful accomplishment by their fellows. It is not the unusual, therefore, but rather the inevitable result, that in an epoch of industrialism and material progress, the lode star of success in those fields should have so largely appealed to the desire and compelled the effort of the intelligent and the ambitious.

Present Day Tendencies in Government

AS a logical sequence to the change in the life and habits of the people, it might have been expected that the government itself, the cost of its administration, and the activities assumed by it, should be likewise affected. The radical innovations that have occurred in this respect undoubtedly present one of the gravest problems of our contemporary life.

Twenty-five years ago the function of government, as people understood it, was more or less definite; and the cost of its administration, while always a matter of interest, had not become a subject of grave concern. In 1903, the total tax bill—federal, state and local—amounted to $1,382,000,000; in 1925 the total reached the astonishing amount of $8,175,000,000. In 1903 the total public expenditures amounted to $1,570,000,000; in 1924 governmental disbursements exceeded the sum of $10,252,000,000.

Prudent men cannot contemplate this vast expenditure of public money without a feeling of apprehension as to the ultimate result of present-day tendencies, nor can they free themselves from the conviction that government service may, like any other line of human endeavor, become wrecked upon the rock of wasteful extravagance.

Duty of Trust Company Division

THE Trust Company Division of the American Bankers Association has an extraordinary duty to perform in this respect. You are essentially the product of the growth and development of our times; to you in large measure has been entrusted the custody of the future. Thirty years ago, when you were organized, only seventeen companies were represented in your membership; last year there were more than thirty-one hundred active and associate members. Thirty years ago the combined resources of the trust companies of America were about $800,000,000; now they exceed $19,000,000,000;—while the aggregate amount of the trusts that have been committed to your keeping exceeds in value any sum that has ever before been placed in fiduciary stewardship.

To safeguard and fulfill this trust is the character of the obligation you have assumed. Are you, in its broadest aspects, doing your full duty toward its discharge? That is the question that you must answer to the complete satisfaction individually of your own consciences, and collectively by the attitude and activity of our group.

There is something almost sacred implied in the use of the word "trust." It expresses in its finest sense the attribute of confidence in the righteousness, integrity and character of another. Not alone do I conceive it to be your duty to discharge, within the letter of the indenture creating your relationship, the obligations therein imposed, but in a broader sense there is that more important responsibility of fulfilling your duty as citizens; for, in addition to that imposed upon others, you carry the added responsibility of so exerting your endeavors that the institutions and laws upon which your status depends, and upon which the rights of those whom you represent are vested, may be safeguarded and preserved.

In referring a moment ago to the cost of government, there was voiced the apprehension of the possible consequences of extravagance. Did such expenditures end with a mere wasteful spending of money, the situation would not be as grave as is that presented by the innumerable activities assumed by the government; by the rapid centralization of authority in those departments that are fast becoming a complicated and undesirable bureaucracy; and in the departure from the ideals and principles upon which our government was founded, and in following which it grew great and prospered. Do you not think that the time has come when the voice of America, too long inarticulate, should be raised in protest, and that advocates who preach only from the platform of temporary expediency and who predicate their political fortunes upon issues that are sham, should be swept aside, in the effort to get back to the old landmarks that were so definitely established by the founders, and that constitute our proudest heritage from the past and our greatest hope for the future?

I am not unmindful that government, like religion and law, and theories of science, and customs of every day

life, must change to keep abreast of progress; nor can there be a doubt that lack of impulse to advance results in stagnation and decay; but there is a difference between selecting a course that may on the one hand lead to a safe anchorage, and one which may lead to destruction on the other.

I realize that this occasion is neither the time nor the place to enter into a critical analysis of the theory of our Constitution or the principles of our government. Appropriate reference may, nevertheless, be made to some of the cardinal principles that should be preserved, if the concept that we were taught to believe in is to endure.

Danger in Erosion of Constitutional Principles

IN a recent monograph a distinguished member of the bar, in dealing with the subject of encroachments upon the Federal Constitution, said: "The real danger to the Constitution lies in the gradual erosion of its principles as from time to time, in the excess of party strife, some one of these principles is so ignored that it ceases to be of vital force." To which might be added, I think, the idea that the real danger to our system of government lies not so much in the rabid utterance of the radical, who advocates its destruction through violence and direct action, as in the supine indifference of the great body of well disposed citizens who sit indolently by while active, persistent and well organized minority groups impose their will upon the masses and cause their hobbies to be enacted into solemn declaration of law, that thereby are, or should be binding upon the conscience and actions of the people as a whole. If the experience of mankind justifies—and I submit that it does—the axiom that "That government governs best that governs least," a contemplation of our present status must force the conviction that we have been led far astray.

Respect for Law and Personal Liberty

THROUGHOUT our history as a race there has been preserved the maxim that has characterized it: "Respect for law—tenacity for liberty." Throughout its history the converse has been true: "Disrespect for law when it has unduly interfered with liberty." This government was founded upon the doctrine that there should be exercised by the citizens the greatest latitude of civic liberty consistent with the welfare of the people as a whole, and that laws established upon that principle should be respected by all and violated by none. When violation of any law ceases to carry with it by popular consent the sanction that under its terms should be imposed, its letter becomes a mockery and its attempted administration a travesty.

The function of a state is to govern the political and civic conduct of its members; to restrict personal liberty whenever necessary to protect the state; but no power yet constituted by man can successfully carry restriction beyond the point where common consent permits it to go.

When that great charter that constitutes the foundation of our government was written, among the purposes enumerated in the preamble there was incorporated one which no American should ever forget. It was "to secure the blessings of liberty to ourselves and our posterity." This nation, conceived in the sacrifices of the Revolution, inherited liberty as its birthright;—liberty in personal conduct, liberty in civic action, and liberty in religious thought and worship.

Guiding Principles

THESE principles constitute the landmarks that must guide our destiny if the nation is to endure. That it will endure there can be no doubt. Spasmodic hysteria may come and for a moment engross the political thought, but ultimately sane, sober, common sense will prevail; for it was not ordained that what here has been built shall fall a prey to intemperance, intolerance or petty strife. Rather should we believe that the spirit of our past and the faith in our future will inculcate our citizenship with a determination to free itself from petty bickering and narrow thought, now all too apparent. Hypocrisy, political dishonesty and pragmatism should be scorned into oblivion. Questions that are essentially non-political, and that now serve to divide and embitter the people, should be relegated to their appropriate place for solution through education and good example.

The administration of government in the forty-eight states of the United States and through the Federal authority, presents a problem of increasing difficulty and importance. In the wise solution of the perplexities involved will come the test of our citizenship. That each should do his part, and instead of merely indulging in idle complaint, intelligently take up his share of the burden and carry on, is necessary if we are to go forward to the fulfillment of the prophecy of our country and the achievement of its destiny.

THE TOASTMASTER: In my early boyhood, my taste for poetry was fostered by the obituary poetry in the columns of the "Philadelphia Public Ledger" and ever since that time I have been a constant reader of the "Ledger." My greatest pleasure today, I think, in reading it, is the fact that on the editorial page every day I find one of those delightful poems by a man we all know by reputation, if we do not know him personally, Eddie Guest. We will now hear from Mr. Guest.

Four Walls and a Roof

By EDGAR A. GUEST

Detroit Free Press, Detroit, Mich.

JUDGE FOX, Gentlemen of the Trust Companies of the United States: I think I want to correct at the very outset an impression which might create a misunderstanding. None of that nine billions of dollars of increase is my money. (Laughter.) I also wonder if you fellows get the idea from the introduction that I appear in the obituary columns right along? (Laughter.)

Now, I reserve unto myself the right, in the next presidential election, to vote as I choose, but I have awfully good news for Evans Woolen. The last banquet I attended, at which a gentleman was mentioned for the presidency, was a banquet in Cleveland, at which Mr. Warren Harding was mentioned, and he was elected. (Laughter.) I am offering myself as a good omen.

This word "trust," I never knew until tonight that it had any other meaning than the meaning I applied. I supposed trust was something that you tried to get, not something you carried in to somebody to have him take care of for you.

I never see one of these ministers, members of the clergy, but what I envy him his mother. We had a convention in Detroit a year or two ago, the American Bar Association, at which all the leading lawyers of the United States and some from Europe were present. I picked up a paper in which were interviews of three lady lawyers; the interviews had been printed in the same issue, and by what I thought was a coincidence, each of those ladies began her story by announcing she was the little boy her father had expected, that she had taken up the law, later in life, partly in an attempt to compensate him for his disappointment in not having had a male child in the family. I laughed when I read it, and it occurred to me that maybe I am the little girl my father looked forward to. I don't know anything about that, gentlemen; he never complained of it, if he were disappointed because I am what I happen to be. But I do know this, I am one of the chances my mother had to have a minister in the family. There never was a baby boy born in this world but what, at sometime or other, its mother did not look over the crib and hope and pray that perhaps the family minister had arrived. You know what a source of satisfaction and joy it must be to a mother when finally her boy is ordained.

The Mothers of the Ministers

The mothers of the ministers, how happy they must be,
For they have realized the dream my mother held for me!
They have the joy they hoped for, have the good for which
they've prayed
And the wish that every mother of a baby boy has made.

I never see an acrobat go tumbling through the air,
But what I think some mother's little minister is there.
When Ty Cobb hits a homer and the crowd applauds the
"peach,"
I wonder if his mother wouldn't rather hear him preach.

Above my little cradle, in the days of long ago,
A great cathedral hovered and the bells swung to and fro,
And every Sunday mother heard the chimes and seemed to see
The worshippers assembling there to listen unto me.

But, oh, I took to writing, for I was a willful lad,
And the minister she dreamed of was a joy she never had;
For my brothers took to business and I chose to serve the
Press,
And I robbed my little mother of her dream of happiness.

Yet what if every mother had her fondest dream come true,
And every mother's son should do the work she'd have him do;
The world would teem with ministers, there'd be so many here
You couldn't get a plumber when the faucet's out of gear.

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You know, I am fussed; I knew there were a lot of you, but I didn't have any idea there were so many of you in the world. It never occurred to me that there could be so many engaged in the business of saying, "No!"

I am going back home from the big city of New York, where they herd you all together. I shall stand here and I shall argue any proposition in which I think I am right, and defend my opinions, my point of view, my beliefs against any person, large or small, but with one person—and she is in the city of New York, tonight—, I have no opinions, no points of view, no beliefs that I care enough about to argue.

Yes, My Dear

For honor I'll defy the strong
For principle I stand;
I'll dare to fight against a wrong
With all that I command.
In argument I'll talk or write
'Gainst notions false or queer,
But when the wife says black is white,
I answer: "Yes, my dear!"

It matters not that I am sure
That black is black as ink;
Long would the argument endure
Dare I aloud to think.
And having learned a woman's way
Through many a wedded year,
To all that Nellie's pleased to say
I answer: "Yes, my dear!"

I go where I am told to go.
I stay when told to stay.
Let fools employ the stormier "No!"
I choose the easier way.
I've learned protesting much is vain,
A shorter course I steer;
When Nell makes her position plain,
I answer: "Yes, my dear!"

Much danger for a man and wife
In disputation lies;
"No" is a word that's fraught with strife,
While "Yes" is always wise.
With men I'll argue through the night
Till every doubt grows clear,
But when my wife says black is white,
I answer: "Yes, my dear!"

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From there on, you know, I am just a sort of a half baked individual who never hopes to have dealings with a trust company—has the hope, of course, but never expects to realize it. It would be perfectly great to me, if I thought some day or other, I could walk into the office of a trust company and say, "Here is a little I am not going to need. Will you take care of it for me?" If ever I can start that journey from my office to a trust company office, without being waylaid by somebody who has a prior claim to the money, I shall think I have arrived.

I used to think that life was a simple proposition; that as we went along and tried to do the right thing, there could be no danger. I used to think it was simple, you know; right from wrong was an easy choice to make. I have lived to learn that life is complex and that the most trivial of our actions and the most thoughtless of our sentences may result in great changes in the lives of many people about us. I have an old aunt who has kicked up more disturbance than all the philosophers in the world could straighten out afterwards. She didn't mean it, and I wondered how I could get the idea of the complexity of life over. Finally, her career came to my mind.

My Aunt's Bonnet

They say life's simple, but I don't know,
Who can tell where a word will go,
Or how many hopes will rise and fall
With the weakest brick in the cellar wall,
Or how many hearts will break and bleed
As the result of one careless deed?
Why my old Aunt's bonnet caused more dismay
Than a thousand suns could shine away.

She wore it high through her top-knot pinned,
A perfect kite for a heavy wind,
But the hat would stick though a gale might blow
If she found the place where the pins should go.
One Sunday morning she dressed in haste,
She hadn't a minute which she could waste.
She'd be late for church. Now the tale begins,
She didn't take care with those bonnet pins.

Oh, the wind it howled and the wind it blew,
And away from her head that bonnet flew!
It swirled up straight to select its course,
First brushing the ear of the deacon's horse.
With a leap he scampered away in fright
And scattered the children, left and right,
A stranger grabbed for the horse's head,
But stumbled and fractured his own instead.

After the bonnet a small boy ran,
Knocked over a woman, and tripped a man,
The deacon's daughter married the chap
Who rescued her from the swaying trap,
And she lived to regret it later on.
In all that town there abided none
Whose life wasn't changed on that dreadful day
When my old Aunt's bonnet was blown away.

Some were crippled, and some went mad,
Some turned saintly, and some turned bad,
Birth, and marriage and death and pain
Were all swept down in that bonnet's train,
Wives quarreled with husbands! I can't relate
The endless tricks which were played by fate.
There are folks today who had not been born,
Had my aunt stayed home on that Sunday morn.

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I don't know a thing about trust companies, all I know and all I ever do is to try to insist that all you people are working for, all I am working for, and all every human being I know seems to be working for is four walls and a roof, and a chance to give his children an education and a real chance at their lives, when the time shall come for them to get out into the world. I imagine that is why trust companies are organized, and why they are now doing business.

You know, I am the sort of husband that leaves his pajamas exactly where they fall. Originally, she had only me to pick on, but Bud has gotten to be fourteen, and she hits two birds with every stone she throws now. In the library, only a couple of days ago, she caught me reading a book; I had been there for an hour; Bud bounces in from school, drops his coat on the chair but misses it, his cap a little further along, his school books somewhere further. Mother comes down through the hall, "Bud! Bud! How many times have I told you not to leave things around? You are just like your father, just like him."

I thought one day I would do a bit about this terrible task that a woman has, following the trail of a man, picking things up. I started out with that idea in mind, and then it occurred to me that just so long as it was clothing, shoes and socks, even a woman could grin over such extra burdens, but if a man weren't careful, he would be leaving greater tasks when he got through his room.

Picking Up After Him

"When a man gets through with a room," says she,
"It is always a horrible place to see!
The clothes discarded he flings about,
The dresser drawers are all pulled out.
His underwear is tossed on a chair,
And his socks are here and his collars there,
And his wife must follow his trail to see
That things are left as they ought to be."

Man is careless at best, I know;
In his hurry his way is to let things go,
And there never seems to come into his mind
The countless tasks which he leaves behind
For his wife to do when at last he's through—
The room to tidy and dress anew.
But woman has followed, since life began,
Picking things up for a careless man.

And so long as it's shoes and ties and things
A woman can smile at the care it brings;
But this life itself is a dressing room
Which man must brighten or fill with gloom.
And all joy depends when the sun descends
On the things he leaves and the odds and ends.
If he shirks his duty to serve a whim,
The wife must pick it up after him.

If his trail be strewn with the waste of shame,
The wife must fight for a worthy name;
If he leaves this life as he leaves his room,
The burden of toil must his wife assume.
As the long years run in the sweltering sun,
She must do the things which he should have done.
She must bend her back till her strength grows dim,
Ceaselessly picking up after him.

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You know, I have never had any experience with

executors; we haven't had many executors in the family, but we did have one, once. He was a trusted and great friend of my grandfather's, and when we left the old country, we loved and admired him. My grandfather died, of course, in the course of time, and the executor, who had been the lifetime friend of our family, became our bitterest enemy. There isn't one of us who had a good word for that man. I tried to work it out the other day, I showed it to Frank Blair.

The Executor

I had a friend who died and he
On earth so loved and trusted me
That ere he quite this worldly shore
He made me his executor.
He tasked me through my natural life
To guard the interests of his wife;
To see that everything was done
Both for his daughter and his son.
I have his money to invest
And though I try my level best
To do that wisely, I'm advised,
My judgment oft is criticized.
His widow, once so calm and meek
Comes, hot with rage, three times a week
And rails at me, because I must
To keep my oath, appear unjust.
His children hate the sight of me,
Although their friend I've tried to be
And every relative declares
I interfere with his affairs.
Now when I die I'll never ask
A friend to carry such a task
I'll spare him all such anguish sore
And leave a hired executor.

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One day last Spring—as I say, all I know and all I do are little things about the house, and the thing that interests me more than anything else about my job is the countless times I kick around an idea without picking it up; walk on it, tread it into the ground. I have days down in that office when there isn't a thought in my head, and I wish I could think of one, then something like this happens. I had twenty cracks at this, I don't know why it wasn't done eighteen years ago. Every Spring, I have planted flower seeds of some kind or other in my little garden, and only last Spring, on the way to the golf club, I saw the seed box, remembered I wanted some zinnias, ran into the store, got the seed, paid the kid, and dropped the seeds on the seat beside me. I kept looking down at them, and the first thought I had was, "wouldn't it be great if we could only grow them the way they print them on the back of this."

Then it seemed to me that the seeds began to talk back to me, and this package said, "Eddie, you think you bought flower seed. Well, you did, but if you think about it a little, you will know that you really bought a dime's worth of miracle. You got a dime's worth of something that no living human being can explain to you or create for you. And the next morning, this bit was written:

The Package of Seeds

I paid a dime for a package of seeds
And the clerk tossed them out with a flip.
"We've got 'em assorted for every man's needs,"
He said with a smile on his lip,

"Pansies and poppies and asters and peas!
Ten cents a package! And pick as you please!"

Now seeds are just dimes to the man in the store,
And the dimes are the things that he needs;
And I've been to buy them in seasons before,
But have thought of them merely as seeds;
But it flashed through my mind as I took them this time,
"You have purchased a miracle here for a dime!"

"You've a dime's worth of power which no man can create,
You've a dime's worth of life in your hand!
You've a dime's worth of mystery, destiny, fate,
Which the wisest cannot understand.
In this bright little package, now isn't it odd?
You've a dime's worth of something known only to God!"

"These are seeds, but the plants and the blossoms are here
With their petals of various hues;
In these little pellets, so dry and so queer,
There is power which no chemist can fuse.
Here is one of God's miracles soon to unfold,
Thus for ten cents an ounce is Divinity sold."

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I wonder if you wouldn't like me to do a little bit about the real estate business. I don't know anything about the real estate business; I don't know anything about the trust business. I looked over a copy of a will, and I don't know what "per stirpes" means. But I do know that, years ago, early in our lives, we bought a little house, the first little house that we bought. I borrowed the first $500 from a bank. I know enough about it to do that. Then later on, we needed a bigger house, and before I could get the larger house, I had to sell the smaller one to get the money to make the payment on the larger one. Advertised it for sale—the meanest people in the city of Detroit answered the ad. I don't know how much you know about human beings, but I tell you this, if you want to find out more about them, advertise your house for sale. You know the kind of a house I mean, one that you can come into at midnight or one o'clock in the morning, in the dark, and know perfectly well that you can walk to the exact spot where mother has left the rocking chair, so you can bark your shins on it, a house into which you have grown into every nook and corner. Some of those prospective purchasers were not in my house five minutes, before they began telling me things that were the matter with it, though we hadn't discovered them in all the nine years that we had lived in it.

I got so I hated to see them come, I used to meet them at the door and say, "You don't want to see this place. There's nothing right about it. We have the cellar in the basement." I heard a woman say, "I like this house very much; it is just what we want. If the cellar were in the attic, we would buy it." "It isn't, it's in the basement, and I am not going to put the cellar in the attic, even to sell the house to you. All I got out of it was the first $1,000 on the Atchison Avenue property and this little bit:

Selling the Old Home

The house has grown too small, or rather we have grown
Too big to dwell within the walls where all our joys were known.
And so, obedient to the wish of her we love so well,

I have agreed for sordid gold the little home to sell.
Now strangers come to see the place, and secretly I sigh,
And deep within my breast I hope that they'll refuse to buy.

"This bedroom's small," one woman said; up went her nose
with scorn!
To me that is a splendid room where little Bud was born.
"The walls are sadly finger-marked," another stranger said.
A lump came rising in my throat; I felt my cheeks were red.
"Yes, yes," I answered, "so they are. The fingermarks are
free
But I'd not leave them here if I could take them all with me.
"The stairway shows the signs of wear," I answered her in
heat,
"That's but the glorious sign to me of happy little feet.
Most anyone can have a flight of shiny stairs and new
But those are steps where joy has raced, and love and
laughter, too."
"This paper's ruined! Here are scrawled some pencil marks,
I note."
I'd treasured them for years. They were the first he ever
wrote

Oh I suppose we'll sell the place; it's right that we should go;
The children must have larger rooms in which to live and
grow.
But all my joys were cradled here; 'tis here I've lived my best,
'Tis here, whatever else shall come, we've been our happiest;
And though into a stranger's hands this home I shall resign,
And take his gold in pay for it, I still shall call it mine.

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I was going home to that little house one very rainy night, and on his doorstep was a neighbor of mine, doing as pretty a job of foot-wiping as I have ever seen, except one. I am the best trained foot-wiper in the city of Detroit. That is one trait I know I have.

I could throw my arms about the man or woman who will suggest to me the topic for tomorrow's bit. When I saw this fellow on his doorstep, I could have given him a hug. The idea came to me to write a frivolous bit about a man wiping his own feet on his own doormat in front of his own house, something I know all about. It's a good idea. So, the next day, I began mentally to work it out, I was playing with that fellow and having a lot of fun, and then a little voice that "butts" into my affairs, said, "Eddie, sure that's the way to do it? Maybe that fellow wasn't merely wiping his feet; maybe he was doing a little more than you could see." Back I would go to the frivolous thought, then back would come the voice, and by the time I got paper in the typewriter, this is how it worked out.

At the Door

He wiped his feet before his door,
But ere he entered he did more;
'Twas not enough to cleanse his feet
Of dirt they'd gathered in the street;
He stood and dusted off his mind
And left all trace of care behind.
"In here I will not take," said he,
"The stains the day has brought to me.

"Beyond this door shall never go
The burdens that are mine to know;
The day is done, and here I leave
The petty things that vex and grieve;
What clings to me of hate and sin
To them I will not carry in;
Only the good shall go with me
For their devoted eyes to see.

"I will not burden them with cares,
Nor track the home with grim affairs;
I will not at my table sit
With soul unclean and mind unfit;
Beyond this door I will not take
The outward signs of inward ache;
I will not take a dreary mind
Into the house for them to find."

He dusted off the stains of strife,
The mud that's incident to life,
The blemishes of careless thought
The traces of the fight he'd fought,
The selfish humors and the mean,
And when he entered he was clean.

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One or two other little bits and then I think I will be through. Here is one done for me; one that is a sort of an attempt to sum up all the things I have done for you. I know how you look at it, because the bank boys have been in and talked to me about it.

It occurred to me once that when the game is all over and played out, when there isn't to be any more tomorrow, when I shall have done everything that I was sent here to do and there is nothing left for me to see or hear and I get across on the other side, there may be some inquisitive fellow who will stop me and say, "What is your name?" "Eddie Guest, in the old card index, you know." "Oh, yes, Eddie Guest, let's see, we gave you so many years and so many months and so many weeks and a couple of days extra for good measure; you had all that time; you spent it all, is anybody down there any better off because we let you have that time to live, or did you blow all that time on yourself?" If he should get that impertinent and inquisitive, I thought I would like to look him in the face and say, "Listen, Mister, I never thought of it before, but since you tossed it up to me, yes, I had that time, I spent it all, had a good time spending it, too. I spent a lot of it on me, but I don't think I spent it all on me. Once in a while, I tried to do something for somebody else. I don't want to brag, but send somebody over the road and ask them.

Compensation

I'd like to think when life is done
That I had filled a needed post,
That here and there I'd paid my fare
With more than idle talk and boast;
That I had taken gifts divine,
The breath of life and manhood fine,
And tried to use them now and then
In service for my fellow men.

I'd hate to think when life is through
That I had lived my round of years
A useless kind, that leaves behind
No record in this vale of tears;
That I had wasted all my days
By treading only selfish ways,
And that this world would be the same
If it had never known my name.

I'd like to think that here and there,
When I am gone, there shall remain
A happier spot that might have not
Existed had I toiled for gain;
That some one's cheery voice and smile
Shall prove that I had been worth while;
That I had paid with something fine
My debt to God for life divine.

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And, in conclusion, the little bit I was asked to do. This voice of mine isn't going to last more than a minute longer. I don't know whether Judge Fox ever heard this one, but when I was a police reporter, Frank Blair remembers we had a great character on the bench, named Judge Fallen, who wore his hair long. The regret of my life is that I did not stay a reporter and he did not stay a judge long enough for me to be able to see Judge Fallen have his hair bobbed. It would have made a great story.

I dropped into his court one day, it was sentence day, and he was passing out the bad news to boys who had the inferiority complex. Finally, he came to a tough old safe-blower, and Judge Fallen sentenced him in about this way, saying, "The sentence in your case, young man, is that you shall be confined to the state penitentiary at Jackson, Michigan, for a period of three years and six months." And as they were taking that convict out of the courtroom, he turned to the deputy and said, "Did you hear the old guy cough up that last six months?"

A little bit in conclusion, was done in an attempt to sum up some of the things I have done tonight. I was riding down in a Woodward Avenue car, and two men were talking—I am the snoopiest animal that lives, I listen to any conversation, the Lord didn't make me big enough to "butt in" to them, so I just listen to them, this one gentleman very proudly was telling the gentleman next to him all about the new home he was building, and the emphasis he put on that word "new home" struck me rather forcefully. I thought to myself, "You can't do that, old pal, you can build a new house; you can buy a new house; if you have a lot of luck, somebody might give you a new house, but nobody could build, sell or give a home to you. That is something you, yourselves, have to do with the building, after you come into the possession. So, that morning's work was this:

It takes a heap o' livin' in a house t'make it home,
A heap o' sun and shadder, an' you sometimes have t'roam
Afore you really 'preciate the things yer lef behind,
An' hunger fer 'em somehow, with 'em allus on yer mind.
It don't make any difference how rich yer get t'be,
How much yer chairs an' tables cost, how great yer luxury;
It ain't home t' yer, though it be the palace of a king,
Until somehow yer soul is sort o' wrapped round everything.

Home ain't a place that gold can buy or get up in a minute,
Afore it's home there's got t' be a heap o' livin' in it;
Within th' walls there's got t' be some babies born, an' then
Right there you've got t' bring 'em up t' women good, an' men;
An' gradjerly as time goes on, yer find yer wouldn't part
With anything they ever used—they've grown into yer heart;
The old high chairs, the playthings, too, the little shoes they wore
Yer hoard; an' if yer could ye'd try t' keep th' thumb marks on th' door.

Ye've got t' weep t' make it home, ye've got t' sit an' sigh
An' watch beside a loved one's bed, an' know that Death is nigh;
An' in the stillness o' the night t' see Death's angel come,
An' close the eyes o' her that smiled an' leave her sweet voice dumb.
Fer these are scenes that grip the heart, an' when yer tears are dried,
Yer find the home is dearer than it was an' sanctified;
An' tuggin' allus at yer are the pleasant memories
Of her that was and is no more—ye can't escape from these.

Ye've got t' sing an' dance fer years, ye've got t' romp an' play,
An' learn t' love th' things ye have by usin' 'em each day;
Even the roses 'round the porch must blossom year by year
Afore they 'come a part o' you, suggestin' some one dear
Who used t' love 'em long ago, and trained 'em jes' t' run
The way they do, so's they would get the early mornin' sun;
Ye've got t' love each brick and stone from cellar up t' dome,
It takes a heap o' livin' in a house t' make it home.

(Adjournment)

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